United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

77-7145

ORIGINAL

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., THE HISPANIC SOCIETY OF THE NEW YORK CITY POLICE DEPARTMENT, INC., OSWALDO PEREZ and FELIX E. SANTOS,

Plaintiffs-Respondents,

-against-

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, DEPARTMENT OF PERSONNEL OF THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, ALFONSE D'AMBROSE, individually and in his capacity as Chairman of the Civil Service Commission of the City of New York and Personnel Director of the City of New York, JAMES SMITH and JOSEPHINE GAMBINO, individually and in their capacity as members of the Civil Service Commission of the City of New York, and MICHAEL J. CODD, individually and in his capacity as Commissioner of the New York City Police Department,

Defendants-Appellants.

ON APPEAL FROM JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX
Vol. 3 Transcript- 1 to 320

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Police Department. In addition to that I work together with several Police Departments both foreign and domestic Police Departments on questions of police personnel issues, particularly appointments, selection, recruitment of police officers.

I have been a consultant for the Law Enforcement Assistance Administration several times, and also for the Police Foundation, and also for the MITRE Corporation and several other groups which conduct work in these areas.

Q Could you tell us, sir, what the Rand Corporation is, how it operates?

A The Rand operation is a think tank. Non-profit think tank which conducts all kinds of studies involving national security and domestic problems. In terms of the domestic area, its main function is to try to come up with policy solutions to certain problems within the domestic area. This includes problems of housing, fire services, agency, problems confronted by agencies in the criminal justice system and so forth.

Q I take it, Dr. Cohen, you were one of the people who was approached in 1972 to do a study with regard to what we refer to as Guardians 1, is that right?

A Yes.

Q Can you tell us briefly how you became involved

in preparing what we have referred to as the Rand study? And that is Exhibit H on this affidavit.

A According to my recollection I believe that the City, the Corporation Counsel and at that time I believe it was Norman Redlich contacted us at Rand and we met with him at that time and we discussed the possibility of doing some work related to this lawsuit. During that period of time, I requested, I stated to the Corporation Counsel and to others and his representatives, that I would be willing to conduct this study if we could get both parties to the litigation to endorse the study beforehand in the sense that they would both know that we were doing the study,they would both encourage the study and that the findings of the study would be made available equally to both sides of the litigation.

Q Was that eventually done?

A Yes. We meet with the attorneys for the plaintiffs and we had several meetings together with these attorneys, the attorneys for the plaintiffs and also with representatives of the City and we went through the details of the proposal for this particular study and we were able to bring both sides together to endorse the study so that we could go forward and conduct it.

Q How was it paid for?

A The study, I believe that the fund for the City of New York paid for the study and perhaps the City itself paid for part of the study.

Q Plaintiffs pay any part of it?

A As far as I know, they did not.

Q Okay. What were you trying to achieve with the study? What were you trying to find out? What was the object of the exercise?

A The purpose of the study was to look at two examinations. For police officer. These examinations were--

THE COURT: I don't really think for our purposes, I am not interested in the purposes as I am in the results.

MR. CROWLEY: The purposes are spelled out I think in the introduction to Exhibit H to the Rand survey. Maybe we can go ahead and ask you basically what were the results of your study.

THE WITNESS: The results of the study were connectr to the objective which was to determine whether there were differences by race with regard to the exam scores and we found basically that for the 1968 examination, that is Exam 8046, that 66 percent of the white applicants passed that examination, compared to 36 percent of the black candidates and 35 percent of the Hispanic candidates. For the 1970 examination, for Exam 0013, 83 percent of the white

candidates passed the examination, 50 percent of the black candidates, and 48 percent of the Hispanic candidates passed that examination. This was found to be statistically significant in terms of the pass-fail rate. But even more importan than the pass-fail rate, in terms of the actual findings were the distribution of the scores by ethnic group for each of the examinations.

Q Could I interrupt for a second and suggest that you might turn to the chart after page 1 of the survey.

THE COURT: Is that study going to be a part of this record?

MR. CROWLEY: I beg your pardon?

THE COURT: Are you making that a part of the record? It is not part of the record here.

MR. CROWLEY: I would hope for purposes of this preliminary injunction motion that the affidavits and exhibits would be part of the record on that motion.

THE COURT: You better make them part of the record.

Q Are we looking at the same document, Exhibit H? Is that in fact a copy of the survey that you performed?

A Yes, it is.

MR. CROWLEY: I move its admission as Plaintiffs' Exhibit 1.

MR. CROWLEY: Your Honor, I might just say as an aside, as a procedural matter, we have not asked for somebody from the City to be examined today through whom we could put in these various studies and surveys which were produced in response to our document demand in Guardians 1. I had thought that for purposes of a preliminary injunction motion an affidavit attaching those exhibits would be sufficient. Perhaps we had better --

THE COURT: I don't know. Let's proceed. They are sufficient for your motion but you are at an evidentiary hearing. You are in an evidentiary hearing now. We have to proceed as one proceeds at a hearing.

MR. CROWLEY: I guess I am asking for the Court's instruction as to when we need to call people from the City so that we can put in City records. Not Dr. Cohen's study. I would hope that the City would stipulate to the admission of those documents which were produced by the City which are exhibits to my affidavit.

THE.COURT: I would suspect they might. Let's proceed.

MR. CROWLEY: All right, sir.

xx (Plaintiffs' Exhibit 1 received in evidenc e.)

Q Dr. Cohen, could you refer to the charts after pages 31 and 36 in the survey. I think that relates to

what you were discussing. The Court will see that. Would you explain what those charts represent?

A The chart --

Q Let's start with the one after page 31 if you would please.

A The chart that I have appears on page 30.

THE COURT: What is the title of the chart?

MR. CROWLEY: Your Honor, it doesn't appear to have a title. If you can see up here, I show you page 32.

THE COURT: I have 32 also.

MR. CROWLEY: I am referring to this here.

THE COURT: All right.

MR. CROWLEY: This is an easy way to get into it quickly.

THE COURT: All right. I have it.

THE WITNESS: That particular chart represents the scores for the candidates who took the Exam 0013 and the candidates, and by their scores were divided into deciles. That is, those candidates who scored in the top ten percent were placed in the uppermost or first decile. Those who scored in the next top ten percent were placed in the second decile and so forth down to the end. Those who scored in the lowest decile, the lowest percentiles were placed in the lower deciles.

THE COURT: What was the passing grade?

THE WITNESS: The passing grade for the exam was 75. In order to describe this particular chart, if we refer to some numbers and then look at the actual paragraphs, I think that would be helpful. We found that for the first decile those who scored the highest, 12.8 percent of the whites were in that decile compared to 3.5 percent of the blacks and 2.3 percent of the Hispanics. In the second uppermost decile, you have a similar distribution, 12.2 percent of the whites were in that decile, 4.6 percent of the blacks and 4.2 percent of the Hispanics.

THE COURT: How did you --

You blocked blacks and Hispanics. You have done that. How do you get a percentage? You take the highest percentage? On this chart it says blacks and Hispanics and they each scored at different levels. So what does the--

Q Can you explain in more detail what a decile is?

THE COURT: I know what a decile means.

What I am trying to find out is certain proportion of the blacks scored 3 percent, 4 percent, I don't remember what you said, 3. something percent in the first, the upper decile as opposed to 12. some percent of the whites and certain number of Hispanics. What I want to know is how do I read this figure that you have marked blacks and

Hispanics?

THE WITNESS: For that, we took -- because the black and Hipanics had similar grade distributions as compared to the whites which was entirely different, we thought that for this particular graph, although in other tables we separate them, we should put them together. Because they both were termed minority members in the complaint.

THE COURT: So what you have here is I gather that if blacks scored, let's say, 3 percent and Hispanics scored 2, then you showed 2 percent levels.

THE WITNESS: We would show something in between, a 2-1/2 percent level because the actuage percentage to answer your initial question directly, we took the black subjects and Hispanic subjects, we put them together in terms of numbers and then divided that total number into the scores to get the percentages. So in that sense, we lumped them together. What this particular graph shows is that for the white subjects, you see that they are consistently represently, overrepresented, in the higher deciles, in the upper deciles indicating that they scored higher on the exam than the minority members and as you go down the scores from 100 percent down to the passing grade or near the passing grade, more whites are represented in those particular deciles than the minority members. Once we

come to the point just near passing, which is grades 80 to 78, and then we go down through the fail rate, the failing point, we find that more minority members are over-represented in those deciles, in those lower deciles than white. The probability of getting this kind of distribution in each decile and for this kind of consistency, turned out to be less than once chance in a billion statistically speaki

Q Dr. Cohen, could you perhaps turn to the chart on page 37 of your report and summarize those conclusions?

A Chart 37 is very, very similar to the chart that we just described. And that represents the exam scores and rankings for 8046, the exam given in 1968. As one can see from inspection, it is strikingly similar to the findings of the other exam given in 1970 just described of 0013. You have that same distribution for whites and minority members, that the whites scored, were overrepresented and scored much higher than the non-whites, than the minority members and that they were overrepresented in the upper deciles. As you proceed down to the failing grade here, to the failing point and more minority group members are represented in each of those deciles than the white members. Again, this was statistically significant and the chances statistically speaking were very, very small, that this kind of occurrence or distribution could happy by chance and

as I mentioned before, that was less than one chance in a billion for this to occur by chance. Rather than by race.

Q Could you turn, Dr. Cohen, to page 38 of your report. I refer you to the second complete paragraph, which I gather addresses itself to your views about other examinations, other than the two that you looked at in detail. Can you tell us what your views were about other entry level examinations given in this ame period?

A Yes. Generally speaking, even if we would have selected one examination, so to say, as a sampling of all the examinations which might be the usual procedure because it is difficult to conduct a study on more than one example, it just takes that much more time, that probably, and most likely would be considered and could be considered a sample of all the other examples that were given. In this particular case, we had two examinations. And what happened was that the statistical findings and distributions for both examinations were strikingly similar. In fact, a test of the hypotheses that the distribution of exam scores for whites on Exam # 8046 was drawn from the distribution for whites on Exam # 0013, showed that the hypothesis cannot be rejected at the .80 level. Which simply means that the two examinations were strikingly similar and to be able to select two examinations and findings, determine that

they do have such strikingly similar distributions certainly lends a great credibility and probability to the fact that they are representative of other exams given during that period. I would think that unless it was clearly demonstrate that other examinations were bizarre or unique or atypical and different than these two examinations, that had we taken any of those other examples, we would get strikingly similar distributions on the basis of ethnic status.

MR. CROWLEY: Thank you. That is all I have.

MS. CARROLL: The defendants will reserve their right to cross-examine as indicated by the Court at a later time to avail myself of the services of a statistician.

THE COURT: All right, you may step down.

MR. CROWLEY: Thank you.

The next witness is Dr. Barrett. Ms. Steinbock will ask the questions.

R I C H A R D S. B A R R E T T, called as a witness, havi been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. STEINBOCK:

Q Mr. Barrett, would you state your profession, please?

A I am a psychologist.

THE WITNESS: Yes. In the beginning when we began the negotiations, I remember I handled the negotiations for Rand. I was very careful at that time to get both parties in the litigation to get together, to support the study and endorse it and to be sure they agreed to the methodology, because I thought that this question was a very important question and personally as an investigator, a social scientist, I did not want to become involved in conducting this study for one side in a litigation. So this is the patent example of a research situation where you do bring both sides together to agree to the format of the study.

THE COURT: That was done?

THE WITNESS: Yes. We had several meetings where we got the agreement finally of both sides.

THE COURT: And all the parties knew what you were going to do, that you were going to take these two tests and not any other tests, these two tests you had selected to make your study on and how you were going to go about it?

THE WITNESS: Yes. They were very careful that they knew these kinds of important details.

THE COURT: All right.

BY MS. CARROLL:

Q The Rand study concludes there was no significant difference in the dropout rate of those who passed the examination for blacks and Hispanics as compared with whites.

A Yes, and I believe that is true.

THE COURT: What are we talking about now, dropout rates from where? I don't understand.

MS. CARROLL: The persons who passed the examination and then there are several other steps before a person completes his PA 150.

THE COURT: I still don't think I understand.

Can you tell me what you two are talking about ?

THE WITNESS: After the candidate passes the examination there are several other steps which the candidate has to go through in the selection process.

THE COURT: Now I understand. You mean that passing the exam is only one of the hurdles and that there have to be several other things that have to be done before being accepted as a police officer?

THE WITNESS: Yes.

THE COURT: Between that and the acceptance that is when you call them a dropout?

THE WITNESS: Right.

Q Your study concludes there was no significant difference in the dropout rate of those who passed based on race, is that correct?

MS. STEINBOCK: I object. That has no relevance to this lawsuit which does not contest anything beyond the exams.

MS. CARROLL: Your Honor, it has relevance to several of the defendants' arguments, and if I might be perm[illegible] to continue --

THE COURT: All right.

Q Would you agree, then, that a retrieval effort directed solely at restoring to the system minority applicants who had dropped out would tend to mitigate the disparate effect of the past rate?

A Probably not.

Q I mean solely directed at minorities, not at minorities.

A If I understand your question corredtly, the answer would be no, for several reaons. On the contrary, because we did make a contrast between the attrition and mortality at the time of taking the written examination and we compared that to the attrition at other stages, that is when the Police Depeartment finally processes each can-

didate with a background investigation, the medical physical, and we found there were no statistically differences with regard to the selection process. In contract itdirects our attention to the written examination and it seemingly indicates to us that the reason why there are few minority members in the Police Department and there is an under representation is because of the written examination.

Q You misunderstood my question. My question was this, and I will give it to you in numbers because I think it will make it clearer. If the comparative pass rates for whites was 83 percent and the pass rate for blacks, for example, was 55 percent and you have a dropout rate after the exam of 10 percent for both, which is what your study concluded, that the rate was similar. We will say it was 10 percent. You develop a minority retrieval effor directed solely at that 10 percent, would that not tend to mitigate the effect of a disparate pass-fail rate? That is my question.

A The answer to that is emphatically no because I did a study on that called Minority REcruitment in the New York City Police Department that I believe was published in -- I don't recall the date because we do so many different kinds of studies in different areas of criminal justice. But I believe it was in 1970, where we examined

precisely that question, that if the Police Department sets up new programs and becomes aggressive in terms of the recruitment methods for those who pass the written examination but then drop out during the other process, they will not succeed in reducing -- in increasing the minority representation --

Q Not at all?

A May I just finish the answer to this question and then I will answer that as best I can.

They would not -- it would not overcome the overwhelmingly large differences and attrition that occurs during the passing of the exam. I noticed because that was one of my recommendations emerging from the 1970 report, if I recall.

Q One of the recommendations would be --

THE COURT: Wait a minute. Let him finish.

A Where I did recommend that, that if they would concentrate on those persons who would drop out they might be able to improve representation.

Now, at that time when I structured that recommendation I recall -- I thought that may increase minority representation somewhat, and I found out afterwards, because if we look at the minority representation in the Police Department even after all the other

exams and recruitment methods , there really isn't any major or substantial increase --

MS CARROLL: Your Honor, I asked the witness if it would mitigate it. I didn't ask him for a thesis on the subject. I said would it mitigate it. Either it would or it wouldn't.

THE COURT: I am interested in hearing the rest of it.

Go ahead.

THE WITNESS: No, the Police Department set up certain minority recruitment programs for purposes of increasing blacks and Hispanics inthe Police Department. That effort did not result in overcoming the attrition rate as a result of the passing of the examination -- as a result of those who passed or failed the examination.

Q If I may getback to my question, my qeustion was on retrieval and not recruitment.

With respect to the Rand study thatyou were talking about, that Rand study was conducted in 1972, was it not?

A I could check it. I could determine the exact publication date of that study. If that is the study, minority recruitment in the New York City Police

Department and that is the one you are referring to where I am a co-author, if that was published in 1972, then I guess that's the one. I published many reports and I don't keep track of the dates of all my publications.

Q Then you will accept my statement then that it was in 1972? December 1972?

A I could check my vitae and tell you for sure. Why should I speculate?

MS. STEINBOCK: I would ask if Miss Carroll has a copy of that.

MS.CARROLL: I don't have one here.

Q Do you have your vitae with you?

A I believe it is in my briefcase over there in the second row or the first row.

(Pause.)

Itis listed here as 1971, May 1971. Now, I don't know whether that is a typrographical error or not. In any event I do remember the report and that is the one that I believe you are referring to when you bring up these questions.

Q That is the one you were referring to.

A It also came out in several different forms at different times and this is oneof the reasons why we confused concerning dates. Different forms -- preliminary

results were presented to the Police Department in published form probably in 1970. A second version came out in 1971. Now these versions overall were the same but they might have differed in terms of select words which simply sharpened the idea.

Q Well, whether it was written in 1971 or 1972 there was in fact a freeze of hiring in the Police Department encompassing those years, from 1970 to 1973, isn't that true?

A I am not sure of the exact years when the freeze took effect.

Q Now, the question that I was asking you about was the retreival effort. I wasn't asking you about the recruitment effort. The retrieval effort -- my question is whether or not a retrieval effort that would be geared towards keeping minorities in who had otherwise dropped out would tend to mitigate or lessen the disparity impact, if there was such, from the examinations.?

A That is not proven. It may or may not be. That is an empirical question that would have to be studied to be determined without doubt.

THE COURT: I thought you said it wouldn't. But all right.

THE WITNESS: May I clarify that?

THE COURT: I think Miss Carroll has a point. I did allow you to make a long statement before. I wanted to hear what you said but she has a right to proceed with her questions.

(Proceed.)

Q Your study showed, did it not, that eligibles who passed the examination are appointed by list number from the group of those approved for appointment, did it not?

A Are you referring to the 1971 study?

Q No, I am referring to the Rand study. I never mentioned the '72 study.

A Would you please repeat that question?

Q Surely. The Rand study, the subject of the plaintiffs' exhibit in this case, showed, did it not, that eligibles who have passed the examination, for example, exams 8046 and 0013, are appointed by list number from the group or groups of those approved for appointment, is that correct?

A I believe so.

Q Such groups, approved groups may exclude persons of higher list rank who for various reasons such as background investigations or other reasons had been delayed in the selection process, isn't that true?

A Yes.

Q It would be erroneous then, would it not, to equate absolutely exam score with appointment date, isn't that true?

A Probably.

Q A pretty high probability, would you say?

A I would have to reexamine the different studies that I did in this area and try to solve that question by reviewing everything and putting it all together. I think it is a complicated question.

Q It is true, isn't it, that if a person scored a certain number on an exam, for example, 8046, and had a problem, medical problem, that his appointment date might well be delayed because of that medical problem, is that right? That's a possibility, isn't it?

A Yes.

THE COURT: I don't understand what we are getting at. I thought that we were talking about the disparity rate of failures on these examinations. You are now talking about some people who passed the exam and you are now seeking to indicate that maybe the reason for the delay in their appointment may be some other thing. I don't think we are involved in that. I thought we were involved in the impact of the examinations on these

people and the fact that they have failed.

MS. CARROLL: Your Honor, with respect to the totality of the subject that is involved here --

THE COURT: But that is not involved. It is not involved here,about people who passed the exams and they didn't get appointed. The people who are making the complaint here are people who failed the examination and are alleging they failed the exam because the exam was discriminatory and therefore they want greater seniority.

MS. CARROLL: But the exact seniority they want is the immediate pass rate --

THE COURT: How will I reach that? The point is no matter what the differences are in the barriers to appointment, it appears to me that a critical step is to pass the examination. You can't get appointed before you do that, can you?

MS. CARROLL: Not generally, no.

Q Can you tell me what statistical tests did you use to determine that exams 0013 and 8046 represent a random sample of all the police officer exams between 1968 and 1970?

A We used a test, a non-parametric test, which discerns the probability of the differences that are observed to be due to chance.

Q Those are the differences on the two tests then

you are talking about, is that right? I mean you established that level for the two defendants in question, isn't that true?

A Yes.

Q Now, you didn't establish it specifically for any of the other tests, did you?

A Well, the statistical tests which were applied specifically to these two tests identify a probability of --

Q But my question was did you establish this for the other tests? You did not, did you?

A Yes. It is establishing it for the other tests. You are applying it to these two tests so I can make certain inferences about other tests.

Q Based upon what?

A Based upon sampling theory and the probability theory.

Q What statistical test did you use, if any, to establish that the candidates who took examination 0013 and 8046 represent a random sample of the people who were ineligible to take these two exams?

THE COURT: I am going to let you go on, but if I understand what Mr. Cohen has said I am not sure that you are in a position to ask any of those questions. If he has advised me that he went over his methodology with

the city and the Police Department and that they agreed upon what was being done, knew what its purpose was and consented to it and agreed to go along with it, I think you are estopped from questioning at the present time.

MS. CARROLL It is not established clearly by him saying it.

THE COURT: I agree.

MS. CARROLL: Even beyond that, I think that there is nothing in this record that indicates that this report was intended to be used to extrapolate from two exams for every other exam that period, and I would have to pursue it further with people in my office who were the attorneys at that time. I have no independent knowledge that the assertion is true. Nor do I believe it appropriate for the defendants to be estopped at this point when any reasonable expectation of estoppel should be imposed against the plaintiffs.

THE COURT: If I conclude on the basis of the evidence that this was an examination which was apparently agreed upon and approved and the purpose of it was as Mr. Cohen has indicated, agreed by the city authorities and the others, and they agreed on the method, obviously you are estopped. As you say, it is not established merely because he says so.

BY MS. CARROLL:

Q Mr. Cohen, I refer you to pages 34 and 38 of the Rand study. Do you have a copy of it there?

A Yes.

Q Can you tell me in the formula that is set forth on page 34, is that the formula that was used to come to the conclusion that it reached on the top of page 38?

A I believe it was.

Q Do you have the calculations for that conclusion?

A The calculations for this conclusion? Do I have them here with me?

THE COURT: What page?

MS. CARROLL: 34, your Honor. The formula on 34 the witness indicates was the basis for the conclusion on the top of page 38 with respect to the hypothesis that you can extrapolate the results from these two exams.

A I don't have the calculations here but I could get the calculations most likely.

MS. CARROLL: Your Honor, can the witness be direc to produce those calculations for purposes of use by our statistical expert, please?

THE COURT:He said he will give them to you.

THE WITNESS: I don't have the calculations

here.

THE COURT: You will make them available to the defendants.

THE WITNESS: I believe I can get them from the Rand Corporation in California.

THE COURT: That creates some problem. In any event, all I can say is he knows he hasn't got them here and maybe they are in California and he will make an effort to get them. That is all I can suggest.

Q With respect to that formula that I referred to on page 34, can you tell me what were the observed and expected values in making that comparison, if you know?

A I would have to go back to the original formula. There were so many different statistical approaches here and so many different formulas that to discuss anyone would require checking and being certain and going through the calculations. I would be reluctant to go down on record and speculate about that.

Q Would you be good enough to produce those as well, if the Court will so direct?

THE COURT: What are you asking him to produce?

MS. CARROLL: I want him to produce the observed and expected values that were used in making the comparison that is referred to, that is necessary,

I guess, for that formula.

THE WITNESS: If I understand you correctly what you would like me to do is to produce the basis and all the records for the report which we conducted.

Q Right.

A I don't know whether I could do that because we collected so much data. I mean I guess we could do it if we have the funds to gather it all together and sort it all out and transport it here.

Q I only want it with respect to that formula and the conclusion that you draw on page 38. I want the calculations as well -- you said you can't give the answer to the question as to what are the observed and expected values in making that comparison, so I want to know what they were if you have them.

A We can provide the calculations.

Q Thank you.

MS. CARROLL: I have no further questions.

THE COURT: Do you have any questions?

MS. STEINBOCK: Yes, your Honor, I have redirect.

REDIRECT EXAMINATION

BY MS. STEINBOCK:

Q Dr. Cohen, I would like to show you page 9

of the Rand report which has been admitted into evidence and ask you to read the first paragraph of the acknowledgment of that page, please, out loud.

A You mean under Roman numerals?

Q Yes. Roman numeral IX of the Rand report entitled "Acknowledgments." It is the small ix in the introduction entitled "Acknowledgments".

MS. CARROLL: I object to the question. The document speaks for itself. The witness has already testified to his belief that in fact that statement is true. But whetheer or not it is true is not proven by his statement. I believe that it is appropriate for the defendants, if the Court deems it necessary, to pursue it further as to what Norman Redlich, et cetera, agreed to, but the witness stating it doesn'tnecessarily make it so and the statement is just self-serving. It is the same source and in effect the same statement from the same person.

THE COURT: I agree with the first part of it, but I want you, now that you have that acknowledgment, you have the resources to make some investigation. I am not going to take my time here with something that you can find out and to verify.

MS. CARROLL: Yes.

MS. STEINBOCK: Your Honor, we have a letter here

from Norman Redlich, the corporation counsel, to the Secretary of the Rand Institute which does reflect the City's agreement and cooperation with the Rand Institute.

THE COURT: You have the letter. Mr. Redlich is the dean of NYU School of Law and it seems to me that you and Miss Carroll can get that settled. It should have been settled before we got into all of this.

I don't see why you can't settle that by a telephone call, by an interview.

MS. STEINBOCK: I was going to ask Miss Carroll to stipulate that this be admitted into evidence.

THE COURT: I don't know if she will stipulate to it or not.

(Pause.)

THE COURT: Any further questions while Miss Carroll is looking at the document?

MS. STEINBOCK: Yes.

THE COURT: All right, we will wait.

(Pause.)

MS. CARROLL: Paragraph 6 of this letter, your Honor, says "The results of this study and the descriptions of the methodology used will be made to all parties to this civil action simultaneously and the institute may publish such results under the names of the

authors with the report to contain a statement to the effect that neither the methodology or the findings necessarily represent the views of the City, any party to this civil action or the fund for the City of New York."

It seemed to me that Mr. Redlich pretty much definitively did not bind himself with respect to the methodology or to the findings by paragraph 6-F of the letter. Although I have never pursued this with Mr. Redlich it would seem to me that precludes the position the plaintiffs are seeking to take.

THE COURT: That really didn't answer the question.

MS. CARROLL: I will pursue it further.

THE COURT: She wants to know whether you will agree to have this made part of the record.

MS. CARROLL: Sure.

THE COURT: She says yes, Miss Steinbock.

MS. STEINBOCK: I would ask this be marked.

(Plaintiffs' Exhibit 14 is received in evidence.)

Q Dr. Cohen, did the city, Mr. Redlich or Miss Omansky or anybody from the city at all, object to the methodology that was being used in the Rand study?

A No.

Q Did you keep the parties advised of the methodology and progress in the Rand report?

A Yes.

Q How?

A Representatives of both sides --

MS. CARR: I object to the question. It is immaterial whether he apprised people of the methodology. If they specifically reserved to themselves the right, one, not to be bound to the methodology, and two, not to be bound as to the results, it is hardly material what he told anyone and paragraph 6 seems to indicate that.

MS. STEINBOCK: I would say, your Honor, while this was reserved no objection was ever made. I am asking Mr. Cohen that question.

THE COURT: If this is part of the evidence, I think it is very clear what occur here, as far as I can read this letter, is this was an agreement pursuant to which the study was going to be made and the study was made by an independent agency which was supposed to conduct the study and come out independent of any influence from the city.

It was authorized by the city. But the city was standing apart from it to allow an independent study to be made. I think I understand it.

Q Mr. Cohen, I show you a document --

THE COURT: I might add that certainly under those circumstances Miss Carroll has every right to check and question the methodology. She has every right to question, based on this letter.

Q Dr. Cohen, I show you a document entitled "The New York City Rand Institute Proposal: Analysis Pertaining to Civil Action No. 72-928."

MS. CARROLL: Objection. The identification is to be done by the witness, not by the attorney. No point in having a witness identifying a document you have already told him what it is.

Q I wuld like to ask you if you have seen that document before?

A Yes, I have.

MS. STEINBOCK: I would like to have this marked in evidence.

(Plaintiffs' Exhibit 15 was marked for identification.)

THE COURT: What is it? He said he has seen it before. Is that sufficient for it to get it in evidence, because he has seen it?

MS. STEINBOCK: No, your Honor.

Q I would like to ask you, Dr. Cohen, if this report

which I have named and which you have said you have seen was mailed to both sides of the litigation?

A May I examine it?

THE COURT: Is that your report, Mr. Cohen?

THE WITNESS: This is the first time I have seen this today and I haven't seen this for a few years so I would like to check it quickly and then answer the question.

THE COURT: All right.

(Pause.)

A Yes, I believe we sent this proposal to both sides of the litigation.

THE COURT: At what stage, before or after the completion of the study?

THE WITNESS: During the process of initiating the study and to get their approval we sent several drafts of proposals to both sides in the litigation. So that everybody would agree and understand the methodology we were going to use.

MS. CARROLL: Your Honor, I didn't hear what your question was.

THE COURT: Before or after? I said when was that sent?

MS. CARROLL: Before or after litigation was

started.

THE COURT: Before or after the study was concluded.

MS. CARROLL: I see. Thank you.

(Plaintiffs' Exhibit 16 was marked for identification.)

THE COURT: In the future, you have to bear in mind that reporter has been here and I have been here 9:30 in the morning. If you are going to present exhibits I certainly don't want to have to wait. Obviously they have to be read. If you want to present exhibits in the future I want you and Ms. Carroll to make an exchange before you get here because it is hard enough as it is. It is not 10 o'clock in the morning.

MS.STEINBOCK: Sorry, your Honor.

Q Dr. Cohen, is this report dated?

A Yes.

Q What is the date on that report?

A 10-26-72.

Q And when did the Rand report or Rand study begin?

A When you say when did it begin, the negotiations or the actual work?

Q No, when did the actual work in compiling these statistics and contacting the subjects begin?

A I don't remember the exact date but it certainly was well after this date.

Q Thank you. Would you describe breifly what is in this document and why this was sent to both parties, please?

A The document simply contains the methodology that was to be used in the study and it was at that point in time the most detailed specification of the research plan and research design that we could think of and which we had available and we made it available to both sides of the litigation so that they would agree to it and permit us to conduct the study.

Q And did they in fact agree to it?

A Yes.

Q Dr. Cohen, does this document indicate which questions will be the subject of the Rand study?

A Which questions?

Q I am sorry, examinations.

A Yes, it does.

Q And what are those examinations?

A 8046 and 0013.

Q In your opinion, Dr. Cohen, did both sides understand the purpose of the Rand study?

MS. CARROLL: I object to the question. How

continual basis all the time."

As I understand your testimony, you are saying that at that time you dind't know whether there was a visitation program in connection with entry level examinations. Do you know today whether there was a field visitation program with respect to entry level examinations?

A At the time of the deposition several years ago the question I think asked was: Was this field visitation made withthe previous examinations?

At that time I did not know whether such field visitations had been made with any or each of those examinations, so I could not say yes. I said I did not know.

If you ask me now, I don't know which ones there would have been field visitations. But this was a procedure that the division chief would take and field visitations were made, but whether they were made for each and every one of these examinations or the other examinations held prior to 1970, I can't answer that question becasue where we had five examinations for the entrance level of the police department, or where they were held on a weekly basis as they were held for a period of time, I would doubt in those cases that there had been

field visitations; but if there had been a gap there could have been, but at this piont I could not say whether there were such visitations or not other than the fact that visitations have been made in some instances, but which ones I don't know.

Q Without gettting into specifics of whether there was a field visit or a program of field visits with respect to a specific examination, can you say whether it was the regular practice of your department for test preparers in your department to make field visits if there had not been a set of field visits in the very recent past?

A Where it was the belief of the division chief that in order to ascertain the duties and responsibilities and the essential skills, knowledge and abilities required for such performance a field visitation was needed, a field visitation would be made.

If it was his judgment that it wouldnot be necessary, there had not been that much change in the duties of a patrolman or the imput from the police department indicated that the previous examination was satisfactory or the previous examinations had been satisfactory, then he might have ruled that there would be no n eed for such field visitation.

Q On page 39 of hovr deposition you say "At the present time under our procedures that have been in effect now for almost a year we have a definite procedure where we have an on-site visitation. We confer with certain individuals there."

That refers to a procedure in effect at that time for a year. You were testifying in December of 1972.

Was there a definite procedure prior to a year before December '72?

A No.

Having the on-site visitation, that was something which was mandated by our department for all examinations, either just prior to or at the same time the EEOC guidelines covered state and municipal civil service commissions.

Q You testified that the division chief would have the authority to decide whether interviews are indicated with respect to a given exam.

A That's right.

Q Do you of your own knowledge know whether any field visitation was made with respect to any of the conversations that are in question here?

A No. I do not know. Your question was: Would I know definitely at this point whether a field

visitation had been made in connection with any of these examinations?

Q Yes, sir.

A I could not say yes or no. I don't know.

Q Do you know of your own knowledge whether there was any observation tour of the sort referred to on page 2 for any of the examinations referred --

A Page 2 of what?

Q Look at page 2 of the phase one report.

(Pause)

Q Observers riding in patrol cars in high-crime precincts.

(Pause)

Q Do you know of your own knowledge whether a similar observation tour was conducted with respect to any of the entry level examinations questioned here?

A My recollection of the organization of the department of personnel prior to 1967 would make me answer that this one, as well as the previous one, was done in connection with patrolman and the other police examinations because at that time we had one unit handling the entrance level examination for patrolman-policewoman and also the promotion examination, and there were interviews, there were observation tours, and there were many

contacts with the police academy in connection with the entire series of public safety examinations that were held by that one division.

Q What is that one division?

A That was called examination division S, I think it was. It was public safety and social work examining division.

Q What is the time frame again?

A This would be --if I can refer to something -- it was sometime in '67, I believe.

(Pause)

A I'm sorry. I thought I had it down. It was sometime in 1967.

Q Was it done after 1967?

A After 1967, that's the point. I have to answer I do not know whethr it was or was not.

Q You believe it was done in 1967?

A Yes.

Q Who would have been the individual in charge of that? Do you recall?

A During that time there was a gentleman by the name of Harry Reiner who was the division chief.

Q Were there observations during this entire period just before the '73 exam, observations at the

police academy as referred to on page 2?

A I can't answer for each of these examinations. I don't know whether they were or were not.

Q Page 3 appears to be a job description. Was any separate job description written by any person in your department in connection with any examination?

A The job description was contained in the rules and procedures of the police department.

Q There is a job description contained--

MS. CARROLL: I don't think the witness has finished.

THE COURT: You may finish.

Q I don't want to know what the police department had written. I want to know if anyone in your department wrote a job description. Did your people ever write a job description for an exampation in the period?

A I donot know.

Q Did your people ever write any job analysis, which I gather several pages of this document constitute, in connection with any entry level examination during the period we are talking about?

A What pages are you on now?

Q As I understand it, and correct me if I am

wrong, all of pages 1 through 9 is in a sense a job analysis; is that correct?

A Yes.

Q Did any people in your department write a job analysis with respect to any entry level examination from 1967 through just before December of 1973?

A No. There was no job analysis prepared of the type you have indicated that was made from page 1 to page 7 in the phase one report of the Psychological Corporation.

Q Was any job analysis written by people in your department during the period we have referred to with respect to any entry level examination, not just one like this but any job analysis? You said you did one.

A The test plan that's contained herein is the final effort of a job analysis to produce a test plan, and the test plan would in effect be the culmination of the efforts of a job analysis and would then lead to the written test.

Q Let me ask my question one last time:

Did you or anyone in your department prepare a job analysis with respect to any entry level examination? I don't mean the next step, the test plan

or the test or the results of test. Did somebody write up a job analysis?

A There was no formal job analysis written up as shown here.

Q Was any formal job analysis written up? This is a simple question. I hope I can get an answer to it. It's important.

A No job analysis of this type appeared in the records that I could find.

Q Was any job analysis written up with respect to any entry level examination?

A For patrolman?

Q Yes.

A Other than 3014?

Q Yes, sir.

(Pause)

A No. It was not formalized in the form of a written report.

Q No written job analysis. Was a job analysis prepared that was not in writing?

A The job analysis was actually the procedure. Whether it appears in writing or not, there is a development of a test plan which would be based upon the elements which I have indicated was done by the city of New

2 Q In the course of this litigation, this
3 phase and the prior phase, we made demands for
4 every job analysis done going back to 1963, 1962. No
5 such analysis was provided.
6 Do you know if any written job analysis was done
7 for any police entry level examination, of your own
8 knowledge?
9 A The answer is no. I don't.
10 MR. CROWLEY: I renew my request that if
11 there is any written job analysis with respect to any
12 examination that we have discussed, perhaps going back
13 to 1965, that it be produced in the very near future
14 by defendants.
15 THE COURT: Is there any?
16 MR. CROWLEY: I assume there is not, but
17 Mr. Weiner's answer raises a question.
18 If there is, can we have the defendants be
19 directed to produce them?
20 THE COURT: I think you are entitled to know
21 whether there is or is not. From what Mr. Weiner says,
22 I can't tell whether there is or is not. I don't
23 know if there was a written analysis in 1890 and
24 then it was updated. I think I should have that informa-
25 tion. You are entitled to it. If there is, the

RICHARD S. BARRETT, called as a witness by the plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KIMERLING:

Q Dr. Barrett, the defendants have claimed content validity for their entry level examination. Could you briefly tell me what is content validity?

A A test can be shown to be content valid if there is a correspondence between the behaviors called for by the test and the behaviors called for on the job.

The claim of content validity depends very heavily on there being a short conceptual leap from job behavior to test behavior, and as that difference between the two becomes more pronounced the claim for content validity becomes less supported.

Q Perhaps you could give us a simple example of what would be a content valid examination.

A Well, my colleagues at Stevens Institute of Technology at the moment are developing a test designed to be content valid for the determination of whether people are qualified to be sheet metal workers. These are people who have claimed to have picked up the skills of sheet metal work by means of work in the field without

going through an apprenticeship program. It is our task to develop a test which shows whether they can or cannot perform satisfactorily as sheet metal workers.

What we have done is developed a series of tests in which the individuals are given pieces of metal, blueprints, equipment, space and time, and told to make pieces according to these blueprints. The pieces are then stamped with a code number and then evaluated by someone who says either yes, these are competently made, or they are incompetently made.

The classic example generally used for content validity is that of the typist. A good typing test has content validity for the typing job when it can be shown there is a correspondence between the task performed on the job and the task performed in the test.

Q Dr. Barrett, do you have an opinion as to whether or not defendants have demonstrated content validity for their entry level examinations from 1967 through 1970?

A Yes, I do.

Q What is your opinion, Dr. Barrett?

A My opinion is they have not demonstrated the content validity of these tests.

Q What is the basis of your opinion?

A The basis of the opinion goes back to the job description that was eventually prepared by the Psychological Corporation, which describes the job very much as a physical interpersonal job, where people are doing things on patrol and in similar situations.

The test of course, is a multiple choice test, which is not at all like the content of the job. The possibility exists that a multiple choice test would get at the kinds of information that the candidate should bring to the job in order to be able to be trained for it and to perform satisfactorily. They have not made that showing either.

Q Do you have an opinion as to whether or not the Civil Service defendants have conducted an adequate job analysis?

A My understanding of Mr. Weiner's testimony is that there was no job analysis, that there was some casual information gathered about the job, but that there was no job analysis that would satisfy the usual standards of the profession.

Q Do the standards require written job analysis?

A A written job analysis is required.

Q Do the standards require visits to the site?

A Yes, or --

MS. CARROLL: I object to the question. COunsel is leading the witness. The witness is an expert. If he wants to solicit from the witness the standards, ask him the standards, but don't tell him what the standars are and then solicit a yes or no answer. It's inappropriate for direct examination.

THE COURT: I agree, Mr. Kimerling.

Objection sustained.

Q In what ways has the job analysis failed to meet professional standards?

A In addition to it not being written down, there was at best very casual interviews with people who may have been on the job or may have been on the job at a previous time, there were some minimal site visits, of which no record was kept. In fact, Mr. Weiner was not even sure whether they had taken place, and if they had taken place, when they were likely to have taken place.

He did not describe a situation in which it would be possible for the Civil Service Commission to develop an adequate picture of the job content to make it possible for them to develop a content valid test.

THE COURT: I would like to have a fuller explanation of your statement that the tests or the testi-

mony in your judgment did not indicate that these tests did not have any content validity.

I understand what you said, but I am not sure I am going to be able to use your shorthand summary, that it is going to be very helpful to me, in terms of your conclusion, in terms of trying to find out in what way you feel that they have failed to show that the test has content validity.

THE WITNESS: Perhaps I could do it, your Honor, by going through one of the tests and going through some of the items.

THE COURT: I think that would be more helpful to me.

THE WITNESS: I refer first to test 9080 and 9081. Item 4 says:

"A policeman comes upon two large teen-age gangs armed and ready for a rumble that may begin in less than a minute. Of the following the most advisable action for him to take first would be to:

"(a) Arrest the leaders of the two gangs before the fight can begin.

"(b) Try to learn what the disagreement is between the two gangs and then tell them which

one is right.

"(c) Call the precinct for help in breaking up the threatened fight.

"(d) Take the names and addresses of everyone present."

5 The brief description does not really give the full flavor of the situation. We have no idea, particularly in a city where we have racial tensions, what the races are of the two groups or of the respondent. There is certainly no reason to believe that a person taking this test will experience the same emotions and really relive the same experience as he would if he were actually confronted with the situation. So what he may say he would do under these circumstances may be vastly different from what he would actually do.

Question 7 in the same examination says --

MS. CARROLL: Your Honor, I would submit that this testimony is not responsive to your question.

THE COURT: I think it is. I asked him to give a fuller explanation to me of his conclusion that the testimony did not show that these tests had content validity and that is what he is doing.

MS. CARROLL: His answer indicated that the fact that a person possessed this knowledge doesn't

necessarily indicate that he will act on that knowledge. That's not responsive to your question as to whether this content is appropriate for a job analysis for police officer. It has to do with something entirely different.

THE COURT: Dr. Barrett's definition of content validity was that the test had to be close to performance on the job. This is what his definition is, that the closer the test is to the actual performance, things you do on the job, then it has content validity.

That is his definition and that is why he is criticizing. He is answering the question as I understand it, Miss Carroll.

THE WITNESS: Question 7 reads:

"A police officer has many responsibilities. In general his main duty is to:

"(a) Carry out strictly all orders from his superiors without any other consideration.

"(b) Perform his assigned duties and at the same time be a friend to the neighborhood people he serves.

"(c) Enforce the law by giving out as many summonses or making as many arrests as possible.

"(d) Do everything he is supposed to do as quickly as possible without thought of fear."

Excuse me. I didn't read that correctly.

"To do everything he is supposed to do as quickly as possible without thought or fear."

In other words, one of the alternatives is he should act without thinking.

In the first place, the behavior involved in choosing one of these alternatives is at most terribly remotely related to the behavior he would exhibit on the job. There is no reason to believe that if someone picks one of these alternatives there follows directly from it job behaviors that can be identified and found to be acceptable or unacceptable by the police.

THE COURT: I think I understand.

THE WITNESS: Okay. Let me go on then to some different sections.

Questions 25 through 30 deal with a written statement about a report and then questions about the report. The questions that are involved here have to do with such things as the patrolman's badge number is, and then four alternatives are given, simply a matter of reading the report and seeing if he can find one of these numbers inthere in the right place and checking off the

1 right answer, which is not, again, what police officers
2 do on the job.
3 Questions 31 to 38 are of a verbal analogy
4 type and may be explained by an example. The sample is
5 dog is to bark as cat is to blank, and then four alternatives
6 are provided, animal, small, meow, and pet, and they
7 explain that since the sound a dog makes is a bark and
8 the sound a cat makes is a meow.
9 There is certainly nothing related to police
10 work in these questions. No behavior is implied.
11 A person can correctly identify the answer to the question,
12 a grapefruit is to orange as salt is to something else.
13 This is not behaviorly related.
14 The next series has to do with civic inform-
15 ation, including questions 39 through 46, asking such
16 questions as, in the sample, the Governor of New York
17 State is Jacob Javits, John Lindsey, Nelson Rockefeller,
18 Richard Nixon. Certainly there is no police related
19 behavior that stems directly from the knowledge or the
20 lack of knowledge of that kind of question.
21 The next series has to do with understand
22 diagrams, questions numbered from 47 through 52.
23 A diagram is presented that shows a series of circles
24 and rectangles with letters T, R and S typed in various --
25

MS. CARROLL: Would you like a copy of the test?

THE COURT: I have it. Thank you.

THE WITNESS: There is nowhere in the job description any indication that police officers spend their time determining how many R's, S's and T's there are in one circle but not in another or in the circle and the rectangle but not in another circle. This is simply not content of the job. It is something else.

The next series has to do with arithmetic. That is questions 53 through 58. One of them illustrates something which is sometimes confused with content validity, so I will read the question. It says:

"Tickets to a policemen's dance are being sold for $1.25 each. Rental of the hall will cost $50, decorations will cost $15, and food will cost $10. In order to make a profit of $150 the number of tickets that must be sold is," and the person must figure out the answer.

There is an attempt to produce face validity for this by saying we have a policemen's dance, the same question to be used for a firemen's ball or sanitation men's ball or anything else, but it has nothing to do with the content of job.

There is then a series of questions, 59 through 66, which has to do with reading a fairly long passage and answering questions about it. This may get at some generalized ability to read, but there is no indication that there is no indication that this is the kind of material that police officers must read.

The next series has to do with figure relations -- the numbers have been cut off my copy; evidently it stops at 72 and starts at 67 -- in which geometrical figures are presented which bear some relationship and it's necessary for the candidate to identify which of the sample of answers continues the relationship. Again, this is something that police officers do not do as the job is described.

Questions 73 through 76 refer to a map which shows some streets, Third Avenue, Second Avenue and First Avenue from 34th to 40th Street, indicating which ones are one way and in what direction, and then the police officer candidate is expected to answer certain questions about how long it would take to get from one place to another and so forth, again, not something police officers regularly do.

Questions 77 to 88 deal with word meanings. Simply a stimulus word is given, four alternatives are

given, one of which is correct, and the police officers identifies which one is right.

Finally, space relations, running from questions 89 through 94, geometrical figures are presented the candidate has to identify from the sample pieces which could be made up out of the ones that were presented in the stimulus.

Finally, from 95 to 100, we have a coding situation in which letters are substituted for numbers and the candidate has to identify which series of letters follows the same code as a series of numbers, and again, this is something that is not the content of the police job that is described In the job description prepared by the Psychological Corporation.

THE COURT: All right.

BY MR. KIMERLING:

Q Dr. Barrett, do you have an opinion as to the professional nature of the Psychological Corporation's job analysis, which is Phase I?

A Yes, I do.

Q What is your opinion?

A My opinion is that it is deficient.

Q What is the basis of your opinion?

A The usual standards for a job description

provide that the reader should be able to determine from studying the job description what is done, how it's done, the relative frequency or importance of various things that are done and the level at which these activities are performed. This information is not available from this job description.

Q Do you have an opinion as to the content validity of the Psychological Corporation's examination, examination 3014?

A Yes.

Q What is your opinion?

A I believe it's not content valid.

Q What is the basis of your opinion?

A An analysis of the test shows that it has items of the same general type that I have just described but does not include the items which have to do with the behaviors to be called upon by the police force of a policeman.

Q Do I understand your testimony to be that the Psych Corp examination contains the same areas as the earlier examinations?

A To some extent. There is a considerable lack of overlap.

Q Does the difference between 40 percent

judgment questions on one and 20 percent or 25 percent judgment questions on the other make a difference in whether or not these two examinations or systems of examinations correlate?

MS. CARROLL: I object to the form of the question. Counsel is leading the witness. If he wants to solicit an opinion he shouldn't includ the answer in the question.

THE COURT: I don't believe that is in that category. The objection is overruled.

A A substantial difference.

Q Do you know whether or not there were civic awareness questions on the earlier examination, on 3014?

A No, there were not.

Q Do you know if there were space relation questions On 3014?

A There were not.

THE COURT: Was that the last exam?

MR. KIMERLING: Yes.

Q Do you know whether or not there were space relations questions on examination 3014?

A Yes. There were no space relations questions on examination 3014.

Q Do you know whether or not there were word relations questions on examination 3014?

A There were none.

Q In regards to the job analysis prepared by Psychological Corporation, do you know whether or not they identified oral comprehension and oral communication skills as skills of the job of police officer?

MS. CARROLL: Your Honor, I object. The best evidence of what Psychological Corporation's Phase 1 report contains is included in the document itself and it speaks for itself. The solicitation of this testimony is repetitive and unnecessary.

THE COURT: I don't understand these kinds of questions, Mr. Kimerling. They are not very helpful to me.

You are asking him does he know what was in the examination. What difference does it make if he knows or he doesn't know? I don't understand what difference it makes. Suppose he doesn't know. The exams are before me in evidence. You are not helping me by those kinds of questions.

Q Do you have an opinion, Dr. Barrett, as to the effect on content validity of these examinations due to the failure to have oral comprehension and oral

reference the job description and the test. I would take Item 1 of the test and say that measures something having to do with characteristic 1, Item 2 has to do with No. 5, and so forth. Some items will cover more than one area, so I would put them down.

I would also go to the report of the job duties and indicate on that which test items measure those duties, so that we could look at both of these documents and see what is covered and to what extent.

That I think gives a reader who is not involved in the development of the test a feeeling of how much of the content of the job is actually covered.

THE COURT: All right.

Q Can you define criterion related validity?

A Yes. Criterion related validity is the effort to show the value of a test by demonstrating that there is a direct relationship between the performance on the test and some value performance on the job.

The simplest example of this is predictive validity, in which tests are given to a sample of people who are candidates for the job. People are put on the job with a wide range of test scores, the test scores in the meantime being locked up, so they are unavailable for anyone to check on. After people have been trained on

the job, their performance has become stable, we then get some measure of their performance independent of our our knowledge of their original test scores.

Then by one of a number of different statistical techniques, of which the most popular is the correlation coefficient, we determine what the relationship is between work performance and test scores. If it's high we then say the test has predictive validity in that those who score high on the test tend to do better on the job than those who score low on the test.

Q Do you have an opinion as to whether or not a predictive or criterion related studh can be performed on the position of police officer.

A Yes.

Q Do you know whether or not criterion related studies have been performed in other cities?

A Yes, they have been.

Q Have youhad an opportunity --

THE COURT: I suppose I am supposed to infer by that question that you mean that they have been performed in other cities in respect to police officers.

MR. KIMERLING: That's right. I am sorry.

Q With respect to the position of policeman?

A Yes, they have.

Q Have you had an opportunity to look --

THE COURT: Again, I would like a fuller explanation. The answer is yes and then Mr. Kimerling goes on.

Dr. Weiner I think and it's certainly my impression that the defendants have taken the position that it was not possible -- I think I am correct -- to do a criterion related study, criterion related test, for the job of policeman, although I am vague on this. I think that Dr. Weiner felt this would be a good idea if it could be done, but he didn't feel it could be done.

You say it can be. What you just said is a conclusion which I have to accept or not. I want to know on what basis you reach that conclusion.

THE WITNESS: First off, there are several common reasons why criterion related validity studies cannot be performed, one of which, quite common, is that there is too few subjects available to get statistical stability, which is obviously not the case in the New York City Police Department, with thousands of patrolmen on the job.

Another common reason for not being able to conduct a criterion related validity study is that it's not always possible to get some measure of job performance.

Mr. Weiner said that these measures of job performance had to be objective. That is not really true. If good objective measures are available certainly they should be used. But for many jobs, including that of a police officer, probably the objective measures suffer from a number of flaws which make them less than really desirable.

It's not easy, but there is no logical or compelling psychological reason why the Police Department cannot identify those police officers that they would like to have more of and those police officers they would like to have fewer of and see if they can develop a test that would pick more like they would like to have more of and fewer of what they would like to have fewer of.

If they can't do that then the whole issue of why they must have tests in the first place must be raised. If a person can't tell good beer from bad beer then there is no point in buying expensive beer, one would simply buy whatever was convenient. If the Police Department maintains that there is no way of telling which officers are good and which ones are not then they have no way of justifying a selection instrument.

Q Defendants have prepared a study called a predictive validity study prepared by Dr. Weichun.

Do you have an opinion as to whether or not that study meets professional standards?

A Yes, I do.

Q What is your opinion?

A My opinion is that it does not meet professional standards.

Q What is the basis of your opinion?

A The basis of my opinion primarily goes back to the standards of the American Psychological Association, having to do with tests and manuals, and when I compare this study with the statements in this set of standards I find that many of the things that are called for were not done.

For example, under the heading of criterion related validity, the first standard says:

"All measures of criteria should be described completely and accurately. The manual or research report should comment on the adequacy of a criterion. Whenever feasible, it should draw attention to significant aspects of performance the criterion measure does not reflect and to irrelevant factors likely to affect it,"

and that is called essential.

In Dr. Weichun's report there was no discus-

sion of the adequacy of the criterion and it is indeed essential.

Principle E-3.1 says:

"When the validity of a test for predicting occupational performance is reported the manual should describe the duties of the workers as well as give their job titles,"

and Dr. Weichun's report does not include any description of the duties.

E-3.1.1 says:

"Where a wide range of duties is subsumed under a given occupational label the test user should be warned against assuming that only one pattern of interests or abilities is compatible with the occupation,"

and in this case the only pattern of abilities that was used as a criterion was the ability to answer the tests given at the end of the training period.

Principle E-4 says:

"The criterion measure should be itself studied for evidence of validity and tht evidence should be presented in the manual or report,"

and there was no such study done.

E-4.4 says:

"In criterion related validation it is important that the criterion measure have substantial reliability."

There as no measure of the reliability of the criterion measures.

Finally, there are many principles, but I think this one covers a lot of it, E.5:

"The manual or research report should provide information on the appropriateness or of the limits to the generalizability of validity information," and that was not done.

Q How does that lack of analysis of the criterion affect the validity of the study itself?

A Well, it's essential. It's essential because it is often easy to predict some measure which deals with only a very trivial part of the job when it may be very difficult to predict some measure which is more central to the job content.

For example, going back to my graduate school days, there was a validation study done where someone validated, among other things, an arithmetic test against a criterion of performance in a training program for machine operators and they found that the arithmetic test was a very good predictor of success in the training

program. The psychologists, however, then looked into the situation more carefully and found that success in the training program was measured by two kinds of instruments. One was a measure of proficiency on the machines, in which everybody got essentially the same score, and the other was proficiency on a test of shop arithmetic. So the correlation between the entry tests and what was alleged to be success in the training program really depended only on the accidental relationship between two arithmetic tests.

Q Have you had an opportunity, Dr. Barrett, to examine the criterion, that is, the examinations used at the academy?

A Yes, I have.

MR. KIMERLING: Your Honor, these examinations were provided to us by defendants. One was previously marked as Plaintiffs' Exhibit 27 for identification when Dr. Hall was testifying.

I would like, if we could, to put them all in one exhibit as Plaintiffs' Exhibit 27.

THE COURT: All right. If they are going to be referred to -- you have a number of items -- you probably ought to refer to them as Exhibit 27-A, B, C, something like that, so that if you are going to ask

Behavioral objectives are rather refined measures and we try to get the person who is being trained or the whole class of people being trained to meet these objectives.

They consist of some sort of terminal behavior for whatever unit is being taught, some test conditions, and also some standards.

With the statement of behavioral requirements, the way it is being tested and the standards that are appropriate, then and only then can we say that these standards are meaningful for the purpose of establishing whether the person has been properly trained.

None of that information is here, so I am forced to rely only on the content of the examination questions themselves, and also the job description that was supplied to me.

In that I find that these items are again multiple choice, four or five choice items, highly verbal in nature, having to do very often with things that are unrelated to the work of the police officer. Therefore, they are not appropriate.

For example, in Exhibit 27, question No. 73, it says, "Police Officer Strong who has been with the police department for several years has demonstrated an

ability to make many good arrests, but seems to lack an understanding of the importance of properly handling people. When issuing a summons for a moving violation, Officer Strong should realize that his job would be easier if he applied all the following except

"(a) ability to be factual.

"(b) display of patience.

"(c) ability to hold an intellectual conversation.

"(d) ability to be impartial.

"(e) display of courtesy."

Now, whatever the right answer to that question is, the fact that the candidate or now trainee can select the one that the test writer had in mind is clearly no indication of whether Officer Strong will in fact be factual or display patience or hold intellectual conversations, be impartial or courteous. So this is nothing like what a criterion examination should be when the purpose of the criterion examination is to see whether people have learned what they are supposed to learn to be police officers.

Q Do you know whether or not there had been studies of questions of this sort as to whether or not they do in fact indicate or predict the type of performance

called for?

A The only one I know of is in David v. Washington where they didn't seem to be related.

Q In regard to this type of question which asks the candidate to indicate certain type of behavior or not indicate a certain type of behavior?

MS. CARROLL: I object. The question is incoherent. It is not understandable at all.

THE COURT: I don't understand the question either, Mr. Kimerling.

Q Dr. Barrett, are you aware of any studies which indicate that questions of the sort of No. 73 on Plaintiffs' Exhibit 27, whether or not those types of questions are questions which will help delineate and predict behavior?

A The nearest study I know of has to do with a survey done of two groups of women having to do with their knowledge of ethical and moral behavior. They came out with essentially the same average results on these questions. One group was a group of school teachers; the other group were inmates in the penitentiary.

Clearly, merely knowing what ethical and moral behavior is called for by society does not mean that people are going to exhibit that behavior.

One of the obvious requirements of questions that are used as criteria for training programs is that they should be related to the kind of work the police officer does.

Question 65 on Exhibit 27A says that "Probationary Officer Smith has just been awarded a citation and a cash award from a community group for saving a baby in an apartment house fire. Before accepting this award, Smith should request a determining from

"(a) the Police Commissioner's office.

"(b) his commanding officer.

"(c) the Board of Ethics.

"(d) The commanding officer of the field service area in which he works.

"(e) The CO of the training division."

This is not a piece of information that the police officer needs to carry around in his head. He may need to know that he should always check before accepting a cash award. He doesn't happen to know the right answer to this, he can certainly find out. There is no emergency. He has plenty of time to determine who should give him permission to accept the award.

B, first question reads, "Criminal law is divided into two main parts, procedural and criminal

procedure law, penal law and substantive law, and so forth.

It is not the function of the police officer to write law or write law textbooks, and a knowledge of this has nothing to do with his ability to apply the law in his job.

MS. CARROLL: Your Honor, I object to this entire line of inquiry since there has been no foundation, and in fact there has been a specific admission by this witness that he is not a subject matter expert with respect to police work or police training. How can he testify that knowledge of the criminal law has nothing to do with police duties and police performance?

Number one, he doesn't know; and number two, there has been no foundation for that.

THE COURT: There is no reason for you to be making a speech. Cross-examine him about that if you want to bring those things out.

I have indicated to you in the beginning when you objected to his testimony that your objection goes to the value of his testimony, what value will be given, not whether he can testify on the witness stand.

MS. CARROLL: But there is no foundation for his comment.

THE COURT: He is testifying about an

examination in respect to whether or not, in his judgment, it has any relation to a policeman's job as he understands it.

You can cross-examine him, Ms. Carroll.

A Again in 27E, question 4 says, "The department is headed by a civilian commissioner appointed by the mayor and not a uniformed officer because

"(a) It has usually been difficult to find qualified members of the service for this job;

"(b) The best men for this job are often found in other areas;

"(c) Civil Service tests cannot determine who is best suited for this job;

"(d) The commissioner should reflect the policies of the mayor and the city's highest elected official; and

"(e) The department should reflect the military tradition of a civilian heading a uniformed force."

In my study of the job description, I found nothing in there that says that the police officer appoints the commissioner, and therefore this kind of question is unrelated to his job, unless the description is in error.

27F, question No. 13 asks, "The exclusionary rule of evidence was applied to the state police officers by which of the following Supreme Court cases:

"(a) Terry v. Ohio, Mapp v. Ohio," and so forth.

Here again we have a problem of whether the person is to enforce or use the exclusionary rule of evidence or whether he needs to know the source of that rule. Certainly, the police officer's job has to do with what he does and does not say in the description that he is an expert on the history of the law.

The questions in the first part of 27H deal with a fairly recent development in psychology called transactional analysis, which is a kind of training in which people are trained how to deal with other people when perhaps other people are dealing in an infantile way or a too authoritative way. The attempt is to try to have a gut-level understanding of relationships to deal with people on a face-to-face basis.

On that basis -- and I have used transactional analysis training in my courses -- this question No. 72 is not an appropriate question to determine whether someone has indeed absorbed the information. The question asks:

"According to transactional analysis, a

person acting in a mood described as sulky and moody would be best described as acting in

"(a) apparent ego state;

"(b) id ego state;

"(c) child ego state;

"(d) adult ego state; and

"(e) superlative ego state."

The knowledge of which one of those words is correct is really not as important as the ability to handle someone who is acting in a sulky and moody fashion.

Some of the items put a premium on test-wiseness and test-taking ability, even if the substance of the test item may or may not be useful.

For example, in 27J, item 42 says:

"One of the major functions of the police department is the control of pedestrians and vehicular traffic. Which of the following statements concerning traffic direction is most correct?"

The question is quite specific about picking which one is most correct. It then gives four alternatives and then a fifth alternative which is "none of the above." Since the question asks which one is most correct, "none of the above" cannot be the proper answer unless it happens that none of them are at all important or they are all of

precisely equal importance.

This kind of question is very difficult for people who are not test-wise and who realize that a badly written item like that must be dealt with in terms of what they think the writer of the item had in mind, not what it actually says.

Here we have a question related to an earlier comment, No. 72 in 27K:

"While on radio motor patrol duty, you stop a motorist from making an illegal U turn. Upon requesting his license and registration, the motorist hands you his folded license and registration with a Patrolmen's Benevolent Association card plus a $20 bill inside it. What following action do you take?

"(a) Return everything to the motorist and warn him against future violations;

"(b) Take the money because he is probably a member of the service;

"(c) Return everything and request that he give you only the items that you asked for, license and registration;

"(d) Arrest the motorist for bribery; and

"(e) Return the money and keep the card."

Whatever the person says he will do, and the

question is "what action do you take," certainly is no guarantee that he will perform in that fashion.

Finally in section M we have questions in the area of social science. Question 2 reads:

"Police Officer Green may attempt to judge the personalities of the operators as he seeks to determine the cause of the above accident." Referring to question 1. "Officer Green should be aware that personality: (choose incorrect answer)," and here are your five alternatives:

"(a) Can be easily perceived by our senses and therefore can be scientifically examined."

That clearly is not correct.

"(b) Is unique because each individual is different from every other individual."

Whose personality is not unique? There are certain underlying generalizations, so that can't be correct.

"(c) Is not easily predictable."

And we have to deal with double negatives and the double negatives come out to say it is easily predictable and it is not.

"(d) Is incapable of generalization."

Certainly that is not correct. There are

many brilliant theorists who are generalizing about personality as their life work.

And "(e) Is not yet developed in human beings at birth."

And that certainly is true. So at least three of these possibilities are all incorrect, and the question for the test-taker is to sort out which one of them is correct and which ones are not, so that he can get the answer right.

That is not really related to the job as described in the job description provided by the Psychological Corporation.

Q Do you believe that these examinations are a proper criterion for predicting performance on the job?

A No.

MR. KIMERLING: Your Honor, I don't have any further questions.

MS. CARROLL: Your Honor, I request that I be permitted to start my cross-examination when we return from the luncheon break, rather than starting now, since throughout the course of the --

THE COURT: I don't have that kind of time. We are on a time schedule. Let's proceed with this.

MS. CARROLL: Can I ask you what time we

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2 that you could not. Am I then correct in understanding that
3 testimony is that none of the testimony here so far adduced,
4 psychological phase 1 and so forth, has demonstrated
5 that that examination is valid, because of the various
6 reasons that you set out?
7 So that the testimony is that there has been
8 no demonstration as to the validity, the content validity
9 of the examination because of the various weaknesses that
10 you have indicated.
11 You are not saying that you can say that is
12 invalid but it has not been demonstrated that it is valid.
13 THE WITNESS: That's right, your Honor.
14 THE COURT: All right. We will take a short
15 recess.
16 MR. KIMERLING: At this time the plaintiffs
17 would like to recall Dr. Bernard Cohen.
18 THE COURT: All right.
19 B E R N A R D C O H E N , recalled as a
20 witness, having been previously sworn, was examined
21 and testified further as follows:
22 DIRECT EXAMINATION
23 BY MR. KIMERLING:
XXXX 24 Q Dr. Cohen, you are one of the authors of the
25 Rand Report, as it has been referred to in this case?

A Yes.

Q Are you familiar with the testimony of defendant's expert, Dr. Alan Gross?

A Yes, I am.

Q Dr. Gross testified that he believed that no conclusions could be drawn from your Rand Corporation study because of the methodology that was used and that ideally a random sample should have been done. What's your opinion of that testimony?

A Well, the first thing is that we did use a random sample, although not in the beginning of the study, and at the same time one can definitely draw valid conclusions from this particular study, especially because we used five different methods in trying to determine the ethnicity for the different groups and the subjects who took the examination, and we checked and counter-checked by these different methods.

When we remember that we studied two examinations 8046 and 0013, actually we had ten different methods of checking because there were two separate examinations, and in all these cases the distributions were the same, everything cross-checked, so that I would say, based on the various studies that I have conducted in my experience working with the Police Department in publishing these studies, I

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2 have more confidence in this one than any of the others.

3 Now, as far as what I consider to be one of the

4 major objections in the testimony that I read, was that we di

5 not use a random sample. Well, we did use a random sample

6 but not at the beginning of the study.

7 The reason we did not use a random sample at

8 the beginning of the study is primarily for methodological

9 considerations. From past experience of conducting studies

10 of kinds and survey studies we knew that there would be a

11 high probability that we would not be able to locate all the

12 subjects in that random sample. If we did that we would go

13 through that whole operation and exercise and at the end

14 find out after we spent all the money, and a year's time,

15 that we would have to start counting bodies by going to the

16 Police Department and finding out the race of the subjects

17 and taking the other steps that we did initially. So we

18 avoided that error in the beginning and instead we went down

19 tothe Police Department and we tried to identify those

20 subjects who had been appointed police officers and we did,

21 and we identified more than thirty percent of those officers

22 with certainty.

23 After that we went to the second step which was

24 tosend out a questionnaire to all ten thousand or so of the

25 subjects in this particular study where we identified another

1 mdjw 28 Cohen - direct

2 additional proportion of the subjects, and only at that
3 point, which by the way, consisted of about nearly fifty
4 percent of all the subjects in the study, not thirty or
5 thirty-one percent, as was indicated in the testimony I
6 read, but around fifty percent of the subjects where we
7 actually identified the ethnicity of the subject with
8 certainty.

9 Then we at that point took the remaining fifty
10 percent who were unknown, because we couldn't locate them
11 through the Police Department and we couldn't locate them
12 through the questionnaire, and then we took a random
13 stratified sample of the unknowns and we tried to locate
14 the subjects of that sample.

15 So when we had no other recourse, where we
16 had tried to identify every single subject who could be
17 identified with certainty by checking with the Police Depart-
18 ment and the questionnaire, we did indeed take the
19 random sample at that point.

20 We did more than that, we took a stratified
21 sample, which is even more accurate and precise than just
22 a random sample alone.

23 In any event, it was a minimum of a random
24 sample.

25 At that point with our random sample, where we

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had 1,279 subjects, and one could actually conceive of this as tow separate random samples, because we have two examinations and the samples were taken from individuals in each examination, and all the findings were reported based upon each sample and the individual tests, we attempted to contact the subjects in that sample which was reflected in the characteristics of all the unknown persons by telephone.

We succeeded in contacting 524 of those subjects and determining the race of the subjects through the telephone identification.

For those who we could not contact by telephone, because we couldn't locate their address or telephone number or they had moved, even though we had gone beyond just calling them over the telephone, we even entered their names and addresses in the Police Department stolen property inquiry section, which was connected to the New York State Department of Motor Vehicles computer terminal, in order to find out where these persons lived at the present time so we could contact them. Nevertheless, there were still a fairly large number of subjects who couldn't be contacted by telephone.

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A (Continuing)

At that point -- by the way, this was what would have happened had we taken a random sample in the very beginning of the study. We would have been able to contact thirty or forty percent of them and then have the same problem we were confronted with at this point of time in the study, except that through our methodology we now had the race with certainty of fifty percent or more of the sample of all the subjects.

At this point we --

THE COURT: Let me ask you, isn't all of this spelled out in your document, what you did, your method, everything you have said, isn't that spelled out in the document?

THE WITNESS: Yes, it is spelled out in the document, except for the specific response to why a random sample was not taken. The fact is it was taken.

THE COURT: I would suggest you limit it to what I cannot find from reading the document.

It seems to me that there is no point in having Dr. Cohen testify, retestify, in order to meet the criticism of his study.

MR. KIMERLING: There is no indication in the document, as Dr. Cohen has said, why --

THE COURT: All right. I can understand that. The reason I stopped him was because some of these statements that Dr. Gross testified to -- I was trying to read some of the Rand Report -- as long as I understand the methodology, if it is there for me to read, then there is no need for Dr. Cohen to go over it again.

Certainly you ought to have him indicate why he did not do certain things, whatever you want, but there is no point in spelling out methodology that is already in the record.

MR. KIMERLING: If we could, your Honor, I just want to address one more issue raised by Dr. Gross.

THE COURT: You can address anything at all. I am merely attempting to indicate to you what you need to address and some of the things that you don't in my judgment.

Go ahead. You may continue, doctor.

THE WITNESS: The point then that probably wasn't elaborated with clarity in the report was why we did not take a random sample at the very beginning, although we did take it later on.

THE COURT: I understand you have given your answer as to why you did not take it.

THE WITNESS: Right. The only other point I wanted to make was that after we had identified forty or

forty-two percent of the sample as a result of that telephone survey the remainder of the sample, up to eighty-three percent of all the subjects, were identified through the census track method.

And one more point here, and that is that we then took all those subjects who we -- whose race we had identified by telephone, 524 of them, and we ignored their race and ethnicity and we tried to identify them using the census track method to see the extent of error and to check the validity of the census track method.

After taking 524 of these subjects and determining their race through the census track method we found that we made three errors out of 524. So this was the check that we had that the census track method was highly accurate.

MR. KIMERLING: I have no further questions of Dr. Cohen.

MR. BRENNAN: I have just a few questions. I hope I will not bore your Honor with rehashing some covered material.

CROSS EXAMINATION

BY MR. BRENNAN:

XXXX Q This is your report, is that correct?

THE COURT: Mr. Brennan, I am going to do my

1 best to keep you from doing that.

2 Q I read this Rand report faithfully and of course

3 it is filled with a lot of nieroglyphics that I don't really

4 readily understand.

5 Are you a mathematician, Dr. Cohen?

6 A No, I am not.

7 Q Are you a statistician?

8 A No.

9 Q Did you prepare this report yourself?

10 A No, I did not. I prepared it together with

11 Jan Chaiken and others.

12 Q Do you understand the formula that was

13 entered in this report?

14 A Yes, I do.

15 Q You understand all of the data that underlies

16 the formula?

17 A Yes, I do.

18 Q Did you gather that data yourself?

19 A Most of the data was gathered by myself and

20 assistants who were working with me.

21 Q All right. That's good.

22 You described five methods that you used to

23 retrieve the missing links. The first method was to get

24 information from the Police Department, is that correct?

25

A Yes.

Q By that method you positively identified 28.9 percent of the group on 8046; is that correct?

A That sounds about right. I would have to check the percentage among the thousands of percentages that we have in the report to be sure that is the precise one.

Q Did you know that you were coming here today to testify to the Rand report?

THE COURT: Did you know what?

Q That you were coming here today to testify to the validity of the Rand report.

MR. KIMERLING: I object, your Honor. I don't think the witness has to undergo that kind of snide remark.

MR. BRENNAN: I didn't mean it as a snide remark. I thought that he should have these figures at his fingertips.

THE COURT: Aren't they in the report?

MR. BRENNAN: Yes, they are.

THE COURT: If you are referring to them refer to a page in the report that you are referring to and have him look at it, if you want him to do that.

Q This is on page 7 of the report.

A On page 7?

Q You have to do a little arithmetic to get the

figures out.

A You see what I mean, that it is quite difficult to remember percentages like that, because there are just hundreds of them here, even more.

Q But 28.9 percent seems like --

A That seems about correct.

Q And on 0013 you positively identified through Police Department questionnaires 31.4 percent.

A That sounds quite right.

Q So that overall you positively knew approximately 30 percent of the somewhere in excess of 10,000 subject; is that correct?

A No. That's the same error that was made by the prior expert and I don't want to perpetuate this error.

Q Good.

A We also identified additional subjects by senidng out a questionnaire to all 10,000.

Q I am getting to that.

A Which increased the percentage of known subjects from approximately 30 percent to 45 to 50 percent.

Q I am only at the point now where you got the information from the Police Department and after you got the Police Department information you now know 30 percent

of the over 10,000 subjects; is that correct?

A Correct.

Q Then you tried to retrieve the missing 70 percent, is that correct?

A Yes.

Q The first procedure used was to send out questionnaires?

A I wouldn't say it was the first. It was one of the procedures.

Q First reported procedures.

A We did several things at once. Like we were doing the census track analysis at the same time we sent out the questionnaire. But that was one of the first steps.

Q On 8046 -- let's examine 8046; I am referring now to page 16 -- is it true that you could not contact 25 percent of those people because they could not be located?

A Yes, 25 percent.

Q That is 25 percent of the entire group, is that correct, even the ones that you knew about from the Police Department?

A Yes.

Q On Exam No. 0013 you could not contact 13 percent because they could not be located?

A No, this is the proportion of persons who could not be located because they had moved.

Q That's what I meant. That's what I thought I said.

Of those 75 percent on 8046 that you could contact you had returns on the questionnaires of 20 percent, is that correct?

A That sounds about right.

Q And that is of the entire group, including those known from the Police Department?

A Yes.

Q So that leaves you now knowing 15 percent through the questionnaires of those people who took 8046?

A Perhaps.

Q From questionnaires?

A Perhaps. I would like to be more precise than that.

Q It is in the document.

A No, not all the information here and numbers are in the document. There are ancillary materials that were prepared involving dozens and dozens of writeups that we did which we didn't incorporate into the document because we didn't want to make it more complex than it ought to be. But I could be even more precise in terms of all these

figures, I have them right before me, because I did prepare precisely that for -- to be able to understand better and to transmit this understanding to the Court of the details of exactly how many persons were found using the questionnaire method, and that does not appear in the particular report.

Q I am glad you have that now because we have made continual demands of counsel for plaintiffs for the backup statistics for this report and we were sent a one-page document.

A Well, that was in response to the specific question that was raised I recall during my testimony about the test statistics and that's the information that was desired and I tried to get that and I was able to obtain that and I immediately had it submitted to the Court.

Q All right. So that you are contesting now my reading of this report which suggests to me that through questionnaires you only retrieved 15 percent of the identification of the total group of 8046.

A No, I am not contesting that at all.

Q That's what I asked you.

A No.

Q You said that is not accurate.

A No, I did not say that was not accurate. I

said that we could even be more precise, instead of estimating percentages, through subtractions and other means, which we would have to figure out carefully at this point and not just agree to.

I have the exact number of persons who were found by every single method and I could read that to you and give it to you exactly, without any question.

Q Does it differ from the report?

A No, it does not differ from the report, but --

Q Then why can't we use the report's figure.

A Because it is not contained in the report.

THE COURT: Mr. Brennan, as I understand what Dr. Cohen is saying, you are making statements and figures in regard to matters and he has the precise figures there and he is not differing from the report, but if it is precision you want in terms of precise figures, he can give them to you . That is what he is telling you.

MR. BRENNAN: Your Honor, I think the figures are in the report and I think that my calculations are accurate from my basic knowledge of arithmetic.

THE COURT: The point is you can make your calculations. If he has other figures that make the calculations more precise he can use them. Let's proceed.

BY MR. BRENNAN:

Q If we can't use the figure 15 percent I don't really know how to proceed. Shall we say that the identification --

THE COURT: Is 15 percent in the report or is that your calculation?

MR. BRENNAN: The report says that they could not locate 25 percent of the subjects who took Exam No. 8046. That leaves 75 percent.

THE COURT: All right.

MR. BRENNAN: The report then says of those 75 percent one-fifth responded to the questionnaires. To me one-fifty of 75 percent is 15 percent.

THE COURT: I would agree with you. I am not very good at arithmetic, but that seems all right to me, it seems reasonable enough to me.

MR. BRENNAN: Thank you.

Q So that we can say that approximately 15 percent of the total group who took 8046 were positively identified through the questionnaires?

A Approximately, yes, but not exactly.

Q And that approximately 15 percent included the subjects who were identified through the Police Department,

is that correct?

A No, that's not correct.

Q Could you explain to me where the distinction is?

A Yes. Let's go through this systematically, okay?

You are talking about Exam 8046 now. It is a whole different story, for example, from 0013.

Q We will get to that.

A From the PA 15 records in the Police Department we determined the ethnicity of 1,173 subjects. The questionnaire provided 593 responses, of which 134 were previously known from PA 15 data.

Q Would you repeat that, please?

A 134 were previously known from PA 15 data.

So now we have the precise number of responses. Out of 593 responses to the questionnaire for Exam 8046, 134 were previously known from the PA 15. It's not a question of speculation now. It is a question of being precise and accurate on these very complex numbers, and there are so many of them.

Thus the ethnicity --

Q Could you wait a second? I am trying to do some basic arithmetic.

A If it is subtraction, it's 459 new subjects were determined.

Q Could you work out a percentage for me so I don't have to do that.

A Well, the percentage I have, the percentage I worked out for both the questionnaire -- well, I am not sure which percentage you mean, I have so many. If you want to work them out, go ahead. That is what I was reluctant to do, because that is very confusing.

Q This 459 figure you gave me, these were the people who were additionally identified excluding those that were identified previously?

A Exactly.

Q What is the percentage of the 459 of the entire group?

A Work it out.

Q The entire group was 4,055, according to your report, is that correct?

A If that is what it says in the report. The reason I am reluctant to say yes or no to these different numbers --

THE COURT: Mr. Brennan, we do not have the time for you to be working out percentages.

Q It looks to me from looking at it it is close

to 12 percent. Does that seem fair?

A That seems pretty fair.

Q That raises your known from 28.9 percent to a little over 40 percent.

A Yes.

Q If we did the same thing with 0013, without haggling over what the percentages are, would it be safe to say that approximately 26 percent of the total group were retrieved through the questionnaire, including those known through the PD information?

A Excuse me. Did you say 26 percent?

Q Yes.

A For 0013?

Q Yes.

A No. For 0013, the exact figures there are 1,968 subjects were retrieved through the PA 15.

Q I am talking about the questionnaires.

A 989, excluding those which were known from the Police Department. Now, that is nearly 50 percent. That would be nearly 50 percent of that group. If you add the 263 which we know from the telephone survey with certainty you have over 50 percent, you have 51.4 percent.

Q You are getting ahead of me. I am not as fast as you with the statistics.

A I didn't want to begin with the numbers because they are complicated and confusing when you start throwing around hundreds of numbers here.

Q So that with the PD information and the questionnairs you have totals of 2,957, is that correct?

A It sounds right.

Q Out of a total of 6,266?

A Yes.

Q Which, looking at it, would come to about 47 percent.

A That would be about right.

Q So you now have 40 percent on 8046 and 47 percent on 0013?

A Yes, that sounds about right.

Q Still missing more than half of the subjects?

A Yes.

Q In both tests?

A Yes.

Q You then did something else in addition to the questionnaires to retrieve that? What did you do after that?

A At that point we took a random stratified sample of all those who were unknown and remaining.

Q Can you tell me how many you selected at random

for this telephone sample?

A Yes. For Exam 8046 we selected 649 subjects and for Exam 0013 we selected 630 subjects, for a total of 1,279 subjects.

Q How many of those were you able to contact by telephone?

A 266 subjects were contacted by telephone for Exam 8046 and for Exam 0013 there were 271 subjects, for a total of 537 subjects.

This, by the way, is specifically stated in the report. There were 13 referrals in total. Even though we contacted these persons, there were 13 persons who refused to give us the information over the telephone, and the percentages there then respectively are 41 percent for the Exam 8046 and a 43 percent success rate for 0013.

Q Thank you. That still leaves 59 percent on one exam and 57 percent missing. Were these missing randomly?

A The ones who were missing were part of the random sample.

Q Yes, but were they missing in a stratified sample? Were the same number of people from Decile A missing as were missing from Decile C, for instance?

A Possibly. I am not sure.

Q Did you check that?

A Yes, I think we did check that.

A And you are telling me that in each decile, each of the ten deciles, the same proportion of people were missing from the telephone survey?

A I am not sure. I would have to go to the report to determine that. But I don't think that because of the number of persons we later identified that it would make a difference.

So I am willing to go ahead on the assumption the worst assumption, that they weren't represented equally in each decile. I still think it wouldn't matter.

Q That's the problem with the report, that you are making assumptions, and we are trying to suggest that maybe you don't have the basis to make those suggestions. That's why I am going through it step by step.

A I am merely stating that if we make the assumption it still does not matter even if the assumption is completely wrong. I don't think that assumption in this particular instance will make a difference in the finding.

Q Would you care to estimate for me the probabilities that they would be missing in that stratified fashion in such a random sample?

A Well, it doesn't depend upon --

THE COURT: I do not understand where you are. He is taking the assumption that there was a disproportion in each level, it wouldn't be proportionate all the way down, but he says the theory is that it doesn't make any difference.

The reason you asked him the question was to show that. Now let's move on.

MR. BRENNAN: This is a very important point, your Honor, because this is the part ofthe survey that he suggests --

THE COURT: I do not understand what the point is. He is conceding your point that you wanted to prove by questioning.

MR. BRENNAN: I am sorry. You are right.

Q In making the correction on your telephone survey you did a census survey, a census track survey?

A Census track analysis, yes.

Q Where did you get the census track information from?

A We got it from the census, of course.

Q For what area?

A For the boroughs -- for New York City and the Metropolitan area. It was provided to us by the City.

Q Was it in fact the New York State -- forget it. It doesn't really matter what it was.

But in that source material can you tell me how many census tracks there were?

A I would have to go back and count them.

THE COURT: Are you asking how many census tracks there are in the census?

MR. BRENNAN: In the census from the NewYOrk Metropolitan area.

THE COURT: What difference does it make?

MR. BRENNAN: It becomes material, your Honor, when there is a rather unbelievable statistic that we are getting to hear that seems illogical.

THE COURT: He has gone to a particular census track. He has indicated in his report in some instances they were 100 percent identified as being all one racial group, all black, in another it was 90 percent or something. Those were the percentages that were used. They were set out in the report.

MR. BRENNAN: Those are precisely the figures I am after, your Honor. I think if I will be able to question the witness I might be able to -

THE COURT: All right, but do not ask him questions about how many census tracks there were in the

census report that he looked at.

MR. BRENNAN: That becomes very important, because in the Rand report it says that 83 percent of the people so surveyed live in census tracks that are 100 percent ethnically pure, if you will.

THE COURT: How are you going to prove that by showing how many census tracks there were?

MR. BRENNAN: It is not up to me to prove it. It is up to the proponent of the document to prove it.

THE WITNESS: I thought it was 87 percent, not 83 percent. It is page 23.

MR. BRENNAN: Your Honor, it seems to me that the probability of a random sample of people from a census track as large as New York, for you to come up with 87 percent of those people who live in a census track of 100 percent ethnicity is a rather startling figure.

THE COURT: It may be startling to you, but maybe you are not familiar with the demographic figures.

MR. BRENNAN: That is why I am asking the witness.

THE WITNESS: Well, the only thing I could say about that is that together with hundreds of other fact or thousands of other facts reported in this particular report were based upon my observations and my co-authors'

observations during the time we conducted the study and we tried to be as precise and accurate as we could with all the data and I am as certain -- I am fairly certain that that particular percentage is accurate and precise within the context of human error, trying to be as precise as we could, conducting this study for both sides of the litigation.

Q Did you conduct the census track analysis yourself?

A I participated in it.

Q Did you have any responsibility or control over gathering of the census track data?

A Yes, the entire study was under my direct supervision, including gathering the census track data, and I even recall that it just so happened that I made the contacts with the representative from the City to get this information and I interacted with that person during -- for the period of the study.

However, the study is a team approach and several others worked together with me on it, but it was basically under my supervision.

THE COURT: You do not kn your report identify the census track, so that, for example, Mr. Brennan could go to the census and find the track and verify your estimation. You don't do that, do you?

THE WITNESS: I don't believe so.

Q I believe the document does identify the census track from the New York standard metropolitan statistical area. Does that ring a bell?

A It rings a bell.

Q Is that the census tracks that you used?

THE COURT: Where is that?

MR. BRENNAN: I am not sure. That is why I asked the witness.

A The census track analysis is described in one place inthe report on page 21 and 22 and also in one of the appendix, Appendix D.

It states in the report that to perform this analysis the Institute provided the Department of City Planning with a computer tape giving the addresses of all the subjects who resided in New York City, using a computer program and data file developed by the City for the purpose of matching addresses to census tracks, and it is continued on page 22, I don't want to read it, but we proceived the 1970 census data for the New York SMSA to determine the number of male whites, blacks and Hispanics in each census track, et cetera, as described in the report.

So it is stated there which census tracks were used, and of course if one would like to find out the exact

percentages they could go to this census data, which is available in almost any library, and they could go through the five or six or ten inches of materials and they could check it.

One of the reasons we didn't include all this in the report is that then the report would be about -- much thicker than it is right now and much more complex without adding any additional meaning.

Q All right. Thank you.

When you saw the results of the census figures did it occur to you that those were rather startling figures that you identified or that you come up with 87 percent of your missing subjects in 100 percent --

A No. In the very beginning, when we were negotiating with the City and the other party to the litigation, the plaintiff, the representatives for the plaintiffs, I recall sitting there at a table and mentioning to the people in the group that one of the best ways I thought that we could identify the ethnicity of the subjects without counting bodies, taking samples or doing anything else, was to use a census track analysis, because some prior studies had shown that that was a very good way of identifying individuals.

Q This is all very interesting, doctor, but it

doesn't answer my question.

MR. KIMERLING: I think it should continue, your Honor. I think he is answering the question why he wasn't surprised.

MR. BRENNAN: I asked him if it was startling.

A So I wasn't surprised, because I thought that the census track method would probably be one of the best ways of doing it. But both sides basically wanted us to count bodies.

Q You still haven't answered my question.

A Therefore I wasn't surprised.

THE COURT: He said he wasn't surprised.

MR. BRENNAN: He said he wasn't surprised because he had already recommended using a census track. I am asking if he was surprised by the results of the census track analysis.

THE COURT: I do not really know where that is getting us at all.

MR. BRENNAN: Your Honor, I am suggesting that if he was surprised, and the figures do seem to be rather disproportionate, that he would do something to recheck.

THE COURT: On what basis are you making that statement?

MR. BRENNAN: I am asking the witness.

THE COURT: As I indicated to you, Mr. Brennan, the figures do not seem to be surprising to me. They seem to be consistent with the demographic figures. You seem surprised at the fact that they indicated the residential patterns, but you should not be.

THE WITNESS: In fact, on page 21, one sentence, if I may just quote that short sentence --

THE COURT: Let's move on. If you are going to show that this is overstated then certainly you will have the opportunity to do that.

MR. BRENNAN: Yes, I understand. I will move on.

Q You then used a method of trying to identify Hispanics by tracing a Spanish surname, is that correct?

A Yes.

Q Maybe you can describe it better.

A We used that for the unknown sample as well as doing it as a separate method.

Q And you used 197 known Hispanics.

A 107? Again, the number game. That sounds right. I thought it might have been 124, but I am not certain.

Q And then you found that there were 24 who should have been included because they were Hispanic but had other

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A Yes, and for many years before then as an officer and as a police officer administrator I had a great concern about the value of improving racial balances in the Police Departments to correspond more approximately with the racial balances in the community.

I believe strongly that the police should be of the people and from the people in this kind of democratic society, and I felt the ability of the Police Department to do its job was affected by that, so I had a long concern with that problem.

Q I take it you felt it was a negative impact in having a small minority representation?

A Yes. There was a small minority representation in the Department, and from the point of view of experience of other cities it was frankly frustrating to me that this great city, my home town, did not have as good a record as some other cities.

Q What kind of problems would you have because of a lack of minority representation?

A One of the very difficult problems is the problem for the officer from white middle class background who has not had much experience in poverty neighborhoods or interacting with minority people, even with the best intentions in the world, and with good training, for him

to be able to function effecgively in a minority neighborhood because there are such differences in value systems and cultures, and we all carry with us our own background.

Q Could you give us some examples of those specifics, of those kinds of problems?

A Well, I spent some time in the Police Academy as an instructor and training officer, and later I was training officer in the Police Academy, and in those times I dealt with thousand and thousands of young police officers coming in, and I had the opportunity to observe their first reactions to work on the street, both as recruits at the Academy and during their probationary periods, and from my own experience, and it would be very difficult.

For instance, there is a strong catholic tradition in the Police Department, a kind of worship-of-the-family, and the catholic values concerning the family. I always found it -- often found it to be a problem for officers working in a neighborhood where there might be common law marriages, to find it difficult to relate to people in that situation.

I cite that as just one example, but there are many other examples. There are traditions in Hispanic communities for people to be on the streets,

on their stoops at night, maybe to sing or have a little music or maybe drink beer on the stoops. Maybe a lot of the neighborhoods where these young men come from would not tolerate that kind of behavior, but the police officer who thought that he could enforce his values in those neighborhoods would not be a very effective police officer.

Q Did you try to determine why the minority makeup of the Department was significantly smaller than the minority makeup of the City?

A Yes. I felt I had some general understanding of the problem -- the selection process of bringing people in really is the Civil Service written examination, and from my prior knowledge and the responses I received to questions I raised after becoming Commissioner was that the Civil Service lists results from these tests were poorly representative of minorities; they were heavily white, and that the appointments were made from these lits, and that is why that was really the principal factor in who was recruited and selected into the Department.

MR. CROWLEY: Can we go off the record for a moment, your Honor?

(Discussion off the record.)

BY MR. CROWLEY:

Q Mr. Murphy, I show you a three-page document dated March 3, 1972, apparently from Mr. Peter Ring to the Police Commissioner, and ask if you can identify that document (handing)?

A Yes, I can. I recall this as prepared by Mr. Ring, who was then in the Personnel Bureau of the Department, and addressed to me and some other people.

Q How did this memorandum come to be written, will you tell us?

A After becom ing Commissioner I raised this issue in the Department with the Personnel Bureau, and other people in the Department --

Q "This issue" meaning --

A Th is issue of minority recruitment, and what might be done to improve our experience in the future, in our effort to recruit more minority candidates.

Q And was Mr. Ring given some instructions in that connection?

A Yes. Mr. Ring was assigned to this proj ect in addition to some other things.

Q What was his position?

A Mr. Ring was a civilian employee of the Department, a professio nal civilian employee in the Personnel

Bureau working on personnel matters.

Q I refer you to paragraph numbered 2, and I read you the first sentence:

"There appears to be general agreement that existing testing, and our past recruitment efforts, are the major roadblocks to adequate minority group representation within the Department."

Do you remember that?

A Yes, I recall that.

Q Did you have an opinion of your own as to the accuracy of that statement?

A I agreed with that evaluation.

Q We had a lot of testimony, Mr. Murph y, about the subjects covered by written entry level examinations by the Police Department of New YOrk.

I take it that you are personally familiar in a general way with entry level and promotional examinations in the Department?

A Yes.

Q Do you have a view as to what those examinations essentially tested for -- what kind of skills, aptitude and abilities that the entry examinations tested for?

A The mental ability test, a test for reading

ability, arithmetic skills, judgment-type questions are attempts to test the ability to make judgments based, for example, on reading comprehension.

Q Do you have any opinion, first of all, as to whether it is possible to test for judgment in a written examination such as was offered by the Police Department?

A I don't claim to be a personnel expert or testing expert but my opinion is that the ability to test for the kind of judgment a police officer must exercise on the street is limited in a written test situation because it is a classroom type situation, very different from all that occurs when the officer is dealing with that actual problem on the street. So it may have some validity but I believe it is quite limited.

Q Is it your view as to whether or not there is any correlation between the likelihood of a man who gets the answer right on a judgment question on a written examination will do the right thing on the street?

A I believe the correlation is a small one, not strong.

Q We talked about the fact that written examinations test to some extent for reading, writing and arithmetic skills.

Do you believe those skills are important to

being a good policeman?

A Yes. I think an officer must be able to read laws, manuals, procedures and other things, but again I think that is only part of what we look for in a good officer.

Q Once an officer has a certain level of skill at reading, writing and arithmetic does it matter for a patrolman that he have skills beyond that point to be a good patrolman? Is that an important part of his job performance?

A Yes. I think the important issues are his mature personality, his ability to deal with human problems on the street or in the Department, because those are the things that he will be dealing with every day, and it is difficult for a written test, in my opinion, to test very well for how well the individual can perform in the actual job situation.

Q Have you formed an opinion as to the desirability of having a qualifying examination, qualifying written examination to test for a minimum level of reading, writing and arithmetic skills as opposed to a competitive examination in that area?

A Well, my view of it is that a qualifying examination is adequate just as long as a standard has

been met. I would think that is sufficient, and that beyond that the other issues are the really important ones.

Q We talked about the things that you test for in a written examination. We talked about things like maturity of judgment and so on. Could you evaluate in a general way the relative importance of the skills which you believe are tested for by the written examination and the importance of those other skills, like maturity balance and so forth that you discussed?

A In my view the things that a written examination can test for would have a minor value -- 25 percent, 35 percent maximum, in my opinion, compared to these more important qualities which I would consider in the 60 to 70 percent range.

THE COURT: I understand that although there is a written examination, but before an officer -- an examinee, I suppose -- he is not an officer yet -- before he can be appointed, passing a written examination, and having the equivalent of a high school diploma, would the equivalent of a high school education meet your standards that you mention for educational qualifications?

THE WITNESS: Your Honor, my standard would

be a college degree but --

THE COURT: I am trying to find out whether one is -- what your minimum is in terms of testing for reading, writing and arithmetic skills.

THE WITNESS: Well, I think I would be satisfied if the standard of a high school diploma -- and I don't know very much about what that standard really is, but if a person receiving that certification, a high school diploma, had qualified in these skills, in reading, writing and arithmetic skills, and reading comprehension, that would satisfy me if that was an established standard of qualifications.

THE COURT: As a minimum.

THE WITNESS: Yes.

MR. CROWLEY: Your Honor, before I forget I would like to move the admission of the Ring memorandum as Plaintiffs' Exhibit 36.

THE COURT: Mss Carroll?

MS. CARROLL: I have no objection.

THE COURT: All right.

(Plaintiffs' Exhibit 36 was received in evidence.)

xx BY MR. CROWLEY:

Q Did you have any meetings or discussions, or

did you have members of your staff have meetings or discussions with the senior people at the Department of Personnel, to talk about the problem of tests so far as their impact on minority improvement is concerned?

A Yes. I attended several meetings with the Personnel Director and members of his staff concerning this problem.

Q Who was that at the time?

A Mr. Bronstein -- Harry Bronstein.

Q Did you urge Mr. Bronstein, or did you or members of your staff urge Mr. Bronstein and members of his staff to make changes in the existing tests?

A Yes. I expressed my strong concern about the problem and sought his cooperation, advice and assistance in attempting to resolve them.

Q I notice that in Paragraph No. 4 of the Ring memorandum he talks about a job analysis being a critical step. He says:

"To the best of my knowledge" -- this is Mr. Ring talking -- "To the best of my knowledge this is not being done" -- referring to the job analysis.

Did you discuss that with Mr. Ring?

A Yes, I recall having some discussions about the need for a job analysis.

Q Do you recall whether that problem was brought to the attention of the Personnel Department?

A I believe it was, because I indicated that since we were into some discussions with the Personnel Department and some other people in city government, the Corporation Counsel, for example, that this issue should be raised.

Q Did you make suggestions or you and your staff make suggestions to the Personnel Department and Mr. Bronstein as to steps that might be taken to improve testing and improve minority participation in the department?

A Yes, one question that I raised was the question of qualifying Civil Service examinations as distinguished from the so-called competitive Civil Service examination.

I had recently come from Detroit where the selection process is within the Police Department. At that time it was, rather than controlled by an outside personnel agency or Civil Service Commission and the Detroit Police Department had been using qualifying examinations and it seems to me that was a very positive approach to the solution of this problem and I raised questions about the possibility of that.

Q You say it is a positive approach.

Did it help to increase the minority representatio

in the department in Detroit?

A Yes. It provided more flexibility for the department in making appointments and it permitted the appointment of candidates who cooperated in a number of ways in expediting their own processing and it had brought more blacks into the Detroit Police Department after that method was introduced.

Q In your opinion, did it reduce the quality of the Detroit Police Department, to have a qualifying examination?

A No, not in my opinion.

Q Did you make any other suggestions or were any other suggestions made to your knowledge to the Department of Personnel about how to improve tests from a minority recruitment point of view?

A Yes. We had many discussions about whether, with whatever limitations the tests had in my opinion, whether they were the best that written tests could be and there were these questions about job related issues.

There were many questions about whether the weight of the written examination should remain as high as it was or whether other factors could be introduced that might vary the weights.

Q I think the record will show that the minority

makeup of the department has not changed radically in the last ten years, that the status quo has remained not constant, there has been some improvement but not a radical change.

MS. CARROLL: Your Honor, I would object to that characterization of the --

MR. CROWLEY: Let me withdraw that.

MS. CARROLL: Thank you.

Q Let's refer to the status quo as of 1970, the makeup, the minority makeup of the defendant that you referred to earlier in your testimony.

Are there political or other forces if I may put it that way, in the department or in the city generally that want to maintain or have an interest in maintaining the status quo in the Police Department so far as minority participation is concerned?

A I believe that. Many public statements from various sources about the need for maintaining standards in entrance, and these statements often imply that there was a danger that in order to obtain enough minorities, it would be necessary to lower standards.

I think there was strong opinions for example among police officers.

Q Can I interrupt for a minute and ask you:

Do you believe that in order to obtain a larger minority participation in the department, it is necessary to lower standards?

A No, I don't believe that. That, one reason being that I have serious doubts about what standards are at present and how those standards relate to the job itself.

I recall not only the police union, the PBA officials but other Civil Service union leaders making public comments about the need for maintaining standards which always either stated or implied either a fear that efforts to get more minorities would be a lowering of standard.

Q Do you have a view as to whether or not the PBA for example, did want to preserve the status quo so far as the makeup, ethnic and national of the department is concerned?

A It is my opinion that generally members of the department, especially officers at the patrolman level, had a very high regard for the Civil Service system as it existed and for the written examinations and believed that that was a standard that had to be maintained and was much more important to have that standard than to get more minorities into the department.

I believe some people in the department, a significant number, had negative attitudes about recruiting

large numbers of minority officers.

Q Putting aside the question of standards, do you have a view as to whether there were people in the department who had a negative attitude toward minority recruitment in general?

A I believe there were many people with those views in the department.

Q Does the leadership of the PBA at that time have that view?

A I think many statements of the PBA leadership at that time expressed those views, whether for the benefit of the duespayers or the heartfelt belief of the person making the statement.

Q You mentioned that you had a number of contacts with Mr. Bronstein and others in the Department of Personnel.

Did you form an impression as to what if I may say the leadership of the Department of Personnel, by which I mean Mr. Bronstein and his senior aids, what their attitudes toward minority recruitment was?

A Yes, I did for an opinion. My opinion was that it would be a difficult and controversal effort to achieve what I very strongly wanted to achieve and I felt there was not the commitment to taking on that kind of a fight or a problem.

I felt the sense of frustration in being able to convince people at the Department of Personnel that this was the good fight that we should join and that it was important for the public welfare, and I felt I encountered an attitude of cynicism, or at least an attitude that it is an impossible task, because there is so much opposition to this.

Q Did any representative of the Department of Personnel ever talk about the opposition in more detail?

For example, was there any reference in any of your discussions to the attitudes of the PBA toward more aggressive minority recruitment through improved testing?

MS. CARROLL: Your Honor, I object to the question. Counsel is leading the witness. This is direct examination. The answer should not be contained in the question.

THE COURT: I think that is right, Mr. Crowley.

MR. CROWLEY: Forgive me.

THE COURT: And I do not think you need to.

Q May I just ask whether any member of the Department of Personnel indicated to you what they felt the attitude of the PBA was on minority recruitment?

A Yes. I raised questions about the possibility ofchanging from a competitive to a qualifying Civil Service.

The attitude I seemed to meet consistently was this will require changes in State Law and don't we all know how vigorously the Civil Service unions including the PBA oppose this kind of change?

So in a word, my attitude was that there was not a willingness to take on what I felt would be a difficult controversial fight but one which had to be taken on.

Q You mentioned Mr. Murphy, that you were the director of the Police Academy for a time, is that correct?

A Yes, commanding officer of the Police Academy.

Q I gather that people get grades in the Police Academy for their performance during that training period?

A Yes, they do.

Q Are there written tests and so on given as part of that training?

A Yes, principally written tests.

Q In your opinion, is there a correlation between performance in general at the Police Academy and performance on the street as a patrolman?

A I don't think there is a strong correlation, because once again, the tests at the Police Academy are in a classroom kind of situation remote from the realities of

street performance and I think those tests are weak indicators of what actual performance will be in the field.

Q Going back to the actual entry level examinations.

Do you have an opinion as to whether high performance on entry level examinations is correlated with good performance as a patrolman?

THE COURT: I think he has already told us that.

MR. CROWLEY: He is talking about the Police Academy, sir.

THE COURT: I know, but he has indicated that he thought that the written tests were not any strong indication, passing the tests that are given, there is any strong indication that you are going to be able to be a good police officer.

At least I get that. You can ask the question. It took me longer to tell you not to ask it.

MR. CROWLEY: I wasn't sure I asked the same question about entry level examins as I had in another context

Q Do you have a view as to the correlation between performance on entry level examinations and performance as a policeman?

A Again, I think the Civil Service entry exams are not strong correlators. They are weak indicators of what

field performance will be.

Q Do you have a view as to whether minority members generally perform as well or not as well or better than I guess majority members of the community as policemen on the job?

A It is my view that in this day and age, in our inner cities, minority officers are generally performing better, which I don't want to be interpreted to mean that white officers aren't well intentioned and trying, but I believe they have a disadvantage, white officers as compared to minority officers in dealing with what are the most difficult problems facing the police in our cities, the problems of crime and poverty and alcoholism and drug addiction and all of those problems that correlate so closely with conditions we find in minority communities in our inner cities.

MR. CROWLEY: Could we have just a moment, your Honor?

(Pause)

MR. CROWLEY: That is all we have. Thank you very much.

THE COURT: Ms. Carroll.

MS. CARROLL: Can I have a few minutes, please?

(Pause)

CROSS EXAMINATION

XXX BY MS. CARROLL:

Q Commissioner Murphy, on your direct testimony, you indicated that it was your opinion from your experience that to function effectively as a police officer, a police officer must be a mature individual, able to deal with tensions and pressures, able to make decisions, able to interact in the community.

With respect to those qualifications, how would you proceed to test for them?

MR. CROWLEY: I object, your Honor, on the grounds that Mr. Murphy has not been identified as a testing expert, but I have no objection to his answering.

Q I believe you can answer the question.

A I think I would put less weight on the written test than is the practice in New York City. Among other things that I would put value in are oral interviews and of course here in New York, a character investigation is done. That might be another factor which would carry weight, rather than be a qualifying, disqualifying.

Q Would it be your view that a sensible or practical approach to the problem would be to put candidates for police officer into the field and see how they perform and then evaluate their performance after a period of time

in which their performance has stabilized?

A I think that is a very good measure of how well the individual performs. I have also to respond further to your previous question, I think more could be done for example to test for stress, even in an examination situation than the written examination.

Q You think psychological tests then, perhaps?

A Yes.

Q With respect to the exam for math as it presently exists, you indicated that in your view, the written aspects of the test, that is the test for reading comprehension, mathematical ability, judgment in police situations and vocabulary, that that accounts for perhaps 25 to 30 percent of the content of a police officer's job. Is that your opinion?

A That is the weight I give that among all of the factors that might be used in testing.

Q So let's assume for purposes of developing this concept, you give a candidate an exam, in fact for example for the most recent Exam 3014, we gave 53,000 candidates an exam. And you use the exam as a qualifier and it tests for the areas that we have just outlined.

How do you then select the persons out of the 50,000 who you will appoint to the Police Academy recognizing

that in the course of the last four years, there have bee no more than 1,000 appointments per year to the Police Academy?

A The problem you are posing about a specific situation with 50,000 candidates when only 1,000 can be appointed is a unique situation it seems to me.

But even in that situation, I would accept -- I would prefer that some standard of qualification in the reading skills, the mathematical skills, the reading comprehension, et cetera, simply be qualifying.

Among those qualified, let the Department have the option to select the very best among then on their ability to perform in the kind of situation which is the most important problem the Police Department faces, dealing with crime in high crime areas.

Q But my question remains and I think that your characterization of it as unique is not so accurate since during the course of your entire administration there was no hiring, was there?

MR. CROWLEY: I object to that characterization--

Q Was there any hiring during the period of your administration from '70 to '73?

A Almost none. We were in a job freeze.

Q Since '73 to '76, you are aware that of those

hired, there have been significant layoffs?

A Yes.

Q If I told you that there have been only approximately 4500 police officers hired since 1973 through 1976, would you accept that as a probable figure?

A Sure.

Q So that being the case, the figure I posed of 1,000 in a given year, is not entirely unreasonable; is it?

A No.

Q Now, given that situation and you have an exam as 3014 was for police officer in which 53,000 people take the exam and 47,000 pass, how do you choose which of that pool of candidates gets this limited number of appointments if you don't do it in rank list order?

THE COURT: Don't do it how?

MS. CARROLL: Rank list order.

Q In terms of how they score on this test.

A I think I can answer that.

Rather than relying as much as the present system relies on just the Civil Service written examination, I would like to see other factors in there, and I mentioned as one example, just as an example, an oral interview situation.

I also referred to the possibility of testing the

individual's ability to function under pressure.

I hasten to add I am not a testing expert and I just raise that as a possibility, so I would select on the basis of more factors than just the written examination which today as I understand it and if it is still the same, is the competitive factor .

Q Now, this interviewing and psychological testing, stress testing that you referred to, is this the format used in Detroit?

A Interviewing is part of the process in Detroit.

Q The Detroit Police Department is not in excess of 4,000 policemen, isn't that correct?

A I believe it is still in excess of 4,000 policemen although they just had a very large layoff but I believe there are 5500 officers.

Q Well, compared to the New York City Police Department, it is a much smaller police department?

A Surely.

Q In terms of candidates and number of hires, it is a much smaller group we are talking about, isn't that correct?

A Yes.

Q With respect to New York City Police Department, if we were talking about Examination 3014, if there were 47,000

candidates who had passed this exam, then your proposal would in effect involve oral interviews and psychological testing for 47,000 candidates.

Now, from the point of view of an administrator or you would concede, would you not, that that would involve serious administrative difficulties?

A No, that would be a good investment for the city. All one need do is examine the cost of a police officer including fringe and pension benefits, the cost of training the officer, the enormous cost to the city when an officer is separated during or after probation, suits against the city for errors made by officers, I think it is -- I must say that that argument which I have been hearing in New York for thirty years is an absurd argument, because this city has a budget of billions of dollars and if we cost it out on a per capita basis, that is only a good investment for the city to make in my opinion.

Q Let's look to those factors that you mentioned. You mentioned that there is a high cost in terms of policemen who were discharged after, policemen who were discharged during their probationary period as a cost problem.

Now, with respect to the Police Academy figures that were submitted in this case, there is an indication that of the new candidates that come in, there is a ten

percent drop-out rate, and for those who succeed at the Academy, there is less than a one percent dropout rate throught their probationary term.

Would you agree that with respect to the terminations for cause, once a person has completed his probationary period and is a tenured police officer, they don't exceed between 25 and 30 in an average year?

A I will concede that.

Q So that in terms of cost, we are talking about a ten percent dropout rate at a police academy and 25 to 30 officers in a year and it is your position that that would be comparable to the cost of investigating a whole pool of candidates orally as well as through psychological tests?

MR. CROWLEY: Objection, your Honor. I don't think that is a fair characterization of his testimony.

I think he is talking about a lot of costs in addition to those specific ones.

THE COURT: At any event the objection is sustained. I think that the two positions are clear and that at the present you are arguing. This is argument.

MS. CAROOLL: Your Honor, I wanted to bring out the factors with respect to discharge at the Academy, through the probationary period and during the course of service.

THE COURT: The problem, Ms. Carrool, I have frankly with the question is that you are introducing factors maybe you and Commissioner Murphy know about them as being accurate, but they are not in this record and I don't know. I am not sure that I am going to be able to deal with questions like that.

You are saying only 35 discharges in a year and you are making that statement as if it is a statement of fact. I don't know that.

MS. CARROLL: I asked the Commission from his experience.

THE COURT: All right.

MS. CARROLL: I believe he indicated that was an accurate figure, between 25 and 30.

THE WITNESS: I am sorry. I thought you said that was the data you had and I wouldn't challenge it, but I don't feel confortable saying that that is the actual experience.

While I was commissioner, as I indicated, we were not making appointments and we were not dealing with very many people in a probationary situation, so --

Q But with respect to discharges, the figure that I indicated, discharges for cause, you would agree that between 25 and 30 for a given year is approximately the

average, wouldn't you, from your experience?

MR. CROWLEY: Your Honor, I object on the grounds that there is no basis in the record. Commissioner Murphy said he doesn't know that because there were not tests given while he was commissioner.

MS. CARROLL: That is not the same thing.

A If you mean dismissals?

Q That is what I mean.

Q That number sounds too small to me, because I recall that in my first year as commissioner, I dismissed twice as many people as had ever been dismissed before in a year, so I believe the rate was higher than that.

Q If you dismissed in that year twice as many as ever had been done before, then the logic of what I just said still remains. Those dismissals were pursuant to the Knapp investigation and that was an extraordinary situation, wasn't it?

A No, no. Certainly, they were not just in relation to the Knapp investigation, no. Many cases that were brought by our own internal affairs division that had nothing to do with the Knapp Commission work.

MS. CARROLL: I will introduce a document with respect to the attrition rate of police officers who have achieved tenure.

that, for example, in census tracts where there are 100 percent minority population, that the police precinct population should be 100 percent minority?

Would that be the idea situation in your view?

A Not completely. I think that would be ideal but I know white officers who are more respected and more effective police officers in census tracts that are close to 100 percent black than certain black officers. I think there is no substitute for the officer's own integrity and understanding and cooperative attitude, but as a general fact I think it is ideal to have the Police Department generally representative. Of course I don't advocate that only black officers should serve in an all-black census tract, just as I would not advocate that only white officers serve in the neighborhood I grew up in, in Bay Ridge. I would like to see more black officers there, so I would not, as a police administrator, ever impose as a principle that we will so attempt to identify police officers with the race, by the areas in which they work -- that they are, in effect, maintaining a certain kind of segregation or advocating a certain kind of segregation, but the truth of the matter is in the history of this city and this country that black neighborhoods have been policed

by white police officers, and that there has been an inadequate representation in this city, and in most of our cities, and that black police officers are a very valuable asset who are able to relate to the people and be able to be much more productive for the Police Department.

Q But isn't it necessarily true that what you said, in essence, relies very much on the individual himself, and that it has really very little to do with race -- that a person who has integrity, who has motivation, who has a commitment to service to a community will perform well regardless of his race, snd that that is really what has to be tested rather than what his race is?

A But I also said even with the best intentions in the world, the best training in the world, it is not a practical solution, in my opinion, to the problem to say, for example, that a census tract that is 100 percent black can be well policed by 20 white police officers, that we can get the best policing. You see, the whole concept of democratic policing is that the police are of the people and from the people. It is a relatively new notion. We maintain order in our societies by a kind of military force concept. It is

a relatively new concept that is maybe 150 years old, that the people can police themselves, and I believe -- and I believe very strongly in that, but we do not get that ideal or we do not approximate that concept.

When any group of significant proportion in the community is very poorly represented in the Police Department -- as a matter of fact, I think this was the problem in this city 120 years ago when the Irish were a large part of the population of this city but had not yet been as well represented in the Police Department as they were when I became an officer.

Q And the method by which that was rectified or changed was when you went to compete by taking an examination. Isn't that how the Irish got into the Police Department?

A I don't think that is how the Irish too over the Police Department!

(Laughter.)

I think there are things like politicians and ward heelers --

Q But there were --

MR. CROWLEY: Let him finish, please.

A Yes, I think competitive exams came in, but I think the complexion of the racial and ethnic makeup

A Yes.

Q As part of those duties, you would evaluate the qualifications and the competence of the individuals at the Police Academy with respect to the curriculum utilized there, isn't that correct?

A Yes.

Q And no one passed the Police Academy and went on to become a probationary police officer in terms of field training who did not evidence good performance at the Police Academy; isn't that correct?

A Satisfactory performance at the Police Academy in the training activities and other activities which I must point out are dramatically different than field performance.

What I am trying to say is that the supervisors under me at the Academy had only the opportunity to evaluate the recruits in a training situation and little or no opportunity to evaluate them in the field situation when they went to precincts either as part of their Police Academy training or for the remainder of their probation after they completed Police Academy.

Q But the decisions made with respect to whether such persons would be terminated were made by supervisors in the precincts, isn't that correct?

blacks and Hispanics were taking these exams than were gettin through and if we did nothing but look at the promotional exams in the Police Department, this was clearly obvious to people in the department. It became the topic of discussion in the top circles of the Police Department under Police Commissioner Leary's administration.

Q When was that, excuse me?

A That was back in probably late '67 or early '68 when the decision was made by then Commissioner Howard R. Leary that this was a Department of Personnel problem, both recruiting and selection and it then came to surface again in the administration of Commissioner Murphy when he directed his attention to the imbalance of minorities in the Police Department.

I took on that chore and I can't recall at this time whether or not I was told to take it on at the moment I got involved in it or was assigned to it after I got involved in it.

But in any event, there came a time in 1971 or late, very late '70, when I met with several black officers including members of the Guardian Association and black attorneys in the Police Department and I am not certain but I think perhaps Sergeant Rivera at that time who was then in the Hispanic Association. Certainly he became involved

shortly after initial meetings, to look at the whole question of minority imbalance in the Police Department.

From those meetings, a series of events began to occur in the Police Department as I made this information available to Commissioner Murphy.

Q What were those events?

A One of the events was my going along with Howard R. Sheffey to the NAACP Legal Defense Fund and laying before them the results of preliminary studies that we had made on the number of blacks and Hispanics who were then on four lists that were then in existence in the Police Department as compared to the number of white successful candidates on those lists and pointing out to them that in our opinion and on the basis of recent case law, that in that case law being the Board of Education decision, that it was our opinion that there was substantial evidence that the Department of Personnel and perhaps the Police Department was either engaging in discriminatory practices of discriminatory results were at least evidence on the basis of the rpeliminary evidence.

The Legal Defense Fund showed an interest in the material that I provided for them. I then informed Commissioner Murphy of my findings and of the interest of the NAACP.

Commissioner Murphy showed an immediate interest and together,either together or at my suggestion to him, was that perhaps we ought to let the Mayor know about this because certainly something ought to be done about it, since clearly it was the Department of Personnel's primary obligation to give these tests and to engage in the recruiting.

As a result of that meeting and I have to assume that Commissioner Murphy spoke to the Mayor, because shortly after that, I along with Commissioner Murphy were summoned to City Hall where we met with Mayor's representatives and discussed the whole problem of the imbalance in the uniformed forces in the city and particularly in the Police Department.

Q Did anything further result from these discussions or any further discussions?

A The discussion was rather free-wheeling and wide open as to how do we proceed with this and where did the problem lie and it was pretty much the conclusion of the people then in that room, that the problem was with the Department of Personnel, and that in attempting to deal with that probelm through the Department of Personnel, that we would probably not be able to resolve that problem.

A strategy was then designed and devised to deal

with the problem separated and apart from the then director of the Department of Personnel whom all parties felt they wou not be able to resolve the problem, would run into one series of road blocks after another.

That strategy that was devised was to attempt to shape the problem in terms of a legal problem which was clearly not and everyone recognized that it was a personnel problem and not a legal problem at that point.

But the strategy became if we could shape it as a legal problem, we could give it to Norman Redlich, the Corporation Counsel, who will have the ongoing job to deal with that problem. That was done.

From that, a series of meetings under Norman Redlich, the then Corporation Counsel was convened which he headed and chaired and the Police Department, the Department of Personnel, Commissioner Holmes from Human Rights along with Corporation Counsel staff met periodically to address that issue.

Q You indicated that it was to be framed or it was framed as a legal problem.

A Yes.

Q I am not clear about that. How was it so framed?

A It was felt that if my preliminary analysis was

correct that there was in fact an unexplainable imbalance in the Police Department in terms of minorities versus whites, and on the basis of the recent case law that the Department of Personnel was apparently engaging in some practices that onthe basis of the case law would appear to be discriminatory, and they were also aware at that time that I had spoken to the NAACP Legal Defense Fund and asked them to bring an action both against the Department of Personnel and the Police Department on the basis of these facts and that the city had a brief period of time in which to address that problem befor that suit was filed.

So it was going to become a legal question and it seemed that that was the way to go at it.

Q Was there a discussion at these meetings during this time to ask for a declaratory judgment? Is this what you are referring to?

A As a result of several meetings --

THE COURT: I do not understand. What differenc does that make?

MS. STEINBOCK: Okay, I will stop.

THE COURT: He has indicated to you what is going on whether it was for a declaratory judgment or what not. What difference does it make?

Q Why, to you knowledge, was no legal action of any

kind ever taken, undertaken by the City in itself or by the Department of Personnel?

A I think back in the administration of Howard R. Leary it was pretty clear that it was his opinion that that was not a proper function of the Police Department and it was clearly the function of the Department of Personnel.

In the administration of Howard R. Leary under John Lindsay, I believe that through my efforts with the cooperation of Commissioner Murphy, we attempted to get the city to bring a legal action and in fact ask for declaratory judgment admitting on the basis of our analysis that we needed judicial reform.

MS. CARROLL: Your Honor --

A Judicial remedy, sorry.

MS. CARROLL: Excuse me. If there are going to be any further questions that deal with conferences between the commissioner and the law department of the City of New York --

MS. STEINBOCK: There will not.

MS. CARROLL: On the question of litigation, I believe that neither this witness can waive the privilege nor has the Police Department nor the Law Department, so that such communications are confidential.

MS. STEINBOCK: I have no further questions alon

that line.

Q Commissioner, you testified --

THE COURT: I am sure that nobody is here to assert the privilege. There is no one here that can assert the privilege in any event. Let's proceed.

Q Commissioner, you indicated that in some of these meetings with the Mayor --

THE COURT: No one is here that can assert the privilege.

MS. CARROLL: I assert the privilege on behalf of the City, on behalf of the Law Department.

THE COURT: How can you?

MS. CARROLL: Because I am an attorney in that office and certainly no one else here can waive that privilege.

THE COURT: I doubt that you could assert it but in any event, let's move on. I think that privilege has to be asserted upon whom it refers. Let's proceed.

Q Commissioner, you indicated that I believe that it was your feeling that the Department of Personnel was the bar to changing these entry examinations; is that correct?

A That's correct.

Q On what do you base that opinion?

A I base that on several factors. One that the knowledge that I have to attribute to the director of personnel that there was a tremendous imbalance in the New York City Police Department and that recent case law in this city involving an agency in this city indicated that where that kind of imbalance occurred in tests very similar to the type that were given in the Police Department, the Courts had found that the defendant, the agency in this city was acting unconstitutionally and nothing was done about it.

MS. CARROLL: Your Honor --

A Subsequent to that --

MS. CARROLL: Your Honor, the witness it seems to me can't testify to the legal precedents with respect to the law in this city.

MS. STEINBOCK: Your Honor, I asked for his opinion.

THE COURT: I agree. I do not see what the purpose of this is. I really do not understand what the purpose is.

MS. STEINBOCK: I am asking your Honor for the basis of his opinion that the Department of Personnel was the block to changing the test and I asked that he be allowed to finish his answer.

THE COURT: He has given us that. The Department of Personnel, is that before us?

MS. STEINBOCK: They are a defendant in this lawsuit, your Honor, yes, sir.

THE COURT: I see. I thought it was only the Police Department, I am sorry.

A The second part of my answeris perhaps more responsive in that as a result of the meetings that were convened under the Corporation Counsel, which was not a Law Department function as I understood it, and now understand it, but what is merely appointing a head of a city department to sit and chair a number of other commissioners and deputy commissioners dealing with the problem.

MS. CARROLL: Your Honor, I have to object. The Corporation Counsel's office is the legal representative for every city agency including the New York City Police Department.

THE COURT: All right. I think, Commissioner, that you may answer the question, but you should answer it in terms of the actual facts that you know. I think that would be more helpful.

A As a result of these meetings that were held in this committee, one suggestion -- it gradually filtered down into an agreement pretty much all around the table, that

something was wrong with our testing process that was resulting in the kinds of results that we were getting.

All parties agreed to that except Harry Bronstein, the then Director of Personnel.

It then became agreed that something ought to be done about this, and that the city should take some affirmative action to correct this regardless of the legality or the unconstitutionality without facing that issue, but that certainly this was a result that this city did not want to achieve and that something ought to be done about that.

Harry Bronstein and his counsel would object to doing that. It was decided at one point that Spanish people had a special problem and that something had to be done to deal with Hispanics.

One suggestion by then Deputy Commissioner Luis M. Neco was that the test should be given both in Spanish and in English. Harry Bronstein objected to that.

Finally, in a compromise said he wouldagree to 25 percent of the exam being given in Spanish. I am yet to understand how that was a good faith offer.

At one meeting, we were all assigned tasks that we were to do. Department of Personnel was to do certain things, Police Department was to do certain other things.

In terms of attempting to carry out, to rectify what was then perceived to be a wrong. To my knowledge the only thing that was done was the New York City Police Department's effort and that was to go back and examine that PA-15 and to devise a better PA-15 form.

So I formed a clear opinion after many, many meetings with Harry Bronstein and his counsel that he was --

MS. CARROLL: Your Honor, this witness can't give his opinion.

MS. STEINBOCK: Will you let him finish his answer.

MS. CARROLL: Everything he says is hearsay. All he can give is facts. It is a continuing hearsay conclusory testimony.

THE COURT: That objection, you are absolutely incorrect. I suggest that you read the new rules. I suggest that you familiarize yourself with the Federal Rules. He can given an opinion.

Proceed.

A My opinion after these many meetings with this committee which Harry Bronstein and his counsel were present is that Harry Bronstein was clearly opposed to changing the system of giving the kind of exam that we had given in the past which was a multiple choice written exam with a high

verbal content.

Q Is it correct, Commissioner, that the Department of Personnel had sole authority for those examinations?

A That is correct.

THE COURT: Why would you have to ask him a question like that?

MS. STEINBOCK: The only reason I did --

THE COURT: You ask people questions that you can determine from either it is the law or it is not. Why would you ask him a question like that? Ridiculous.

Q Commissioner, what other means, aside from these efforts to change the test, were suggested by you or by others in these meetings to increase the number of minorities in the New York City Police Department?

THE COURT: Read that question back.

(Record read)

A There were a number of suggestions made in terms of how to restructure the exam and to validate that exam to see whether or not a restructured and validated exam could be given that wouldnot have a racially discriminatory effect.

That was not done. One of the suggestions was to take a class, a recent graduating class from the Police Academy that had come off one of the lists and retest them

on the phsycial part of the exam to see whether or not if we weighted the physical exam or refashioned the physical exam, we could come up with a different outcome in this exam.

That was rejected by the Department of Personnel, and I conducted that examination myself or caused it to be conducted at the Police Academy with Police Department personnel.

It was suggested that we could utilize the community service offices through then existing Civil Service regulations to equate the competitive community service officer job with the police job and transfer the person into the police role.

Under the Civil Service rules, that seemed possible at the time, and that was addressed to the Department of Personnel. The Department of Personnel came back and said that the community service officer was not a true competitive exam and therefore that could not be done. I had no way of testing that.

end t2

Q Was it ever suggested that the eligibility list from the Housing Authority or the Transit Authority be merged into the Police Department?

A At one point during the committee meetings we suggested merging the Transit Authority, the Housing Authority Police with the New York City Police Department, the rationale being that these agencies grew out of the New York City Police Department. At one point the Police Department had jurisdiction over all these departments.

That was rejected by the committee, and particularly the Director of Personnel.

Q In your experience, Commissioner, did blacks want to become police officers?

A Yes. I don't think we had a significant amount of trouble in attracting blacks and Hispanics to test sites to take the exams. We had trouble getting them past the examination process and the screening process.

Q One final question, Commissioner;

In your experience do you feel the Police Department of the City of New York discriminates against minorities?

A I believe that the Department of Personnel

of the City of New York in its selection -- in its recruiting, selection and screening processes, of which the New York City Police Department is a part, discriminates against blacks and Hispanics coming into the Police Department.

MS. STEINBOCK: No further questions.

CROSS EXAMINATION

XX BY MS. CARROLL:

Q Commissioner Ward, are you aware of the Rand Corporation study done for the Civil Service Commission selection procedures in the City of New York, undertaken in May 1973, which concluded that there are no significant differences between white and minority group members with respect to their satisfactorily completing the application form, PA-15 for the position of police officer.

MS. STEINBOCK: If Miss Carroll is reading I would ask her to cite the page and let the Commissioner have the opportunity to see it.

A I am not aware of it. That study was conducted after my separation from the Police Department. I have never seen it.

Q What was the exact date of your separation from the Police Department?

A I believe it is April 1973, I believe when

I was effectively separated. I guess it is April 1974 -- I was effectively separated probably some time in 1973 when I went over to the Traffic Department to become Traffic Commissioner and I lost contact with the Department.

Q And for the period immediately preceding April 1973 what was your position?

A I was Deputy Commissioner of Community Affairs with some ancillary duties, particularly for minority groups.

Q That was a three-year assignment?

A No.

Q What was the length of that assignment?

A I think I was appointed under the Murphy regime, and I believe I was appointed either in December of '70 or the early part of '71 -- no, I guess it was mid-'70.

Q Mid-'70?

A Yes.

Q Now with respect to the three areas that you testified about: recruitment, selection and screening, did you participate in the Department's recruitment effort for 3014 -- exam 3014 given in December 1973?

A No.

Q Did you participate in recruitment in your position as Deputy Commissioner in charge of Community Affairs?

A For what? For what period are you talking about?

Q Well, presumably --

A At any time?

Q Yes, from mid-'70, I believe, you said, to '73?

A If you mean did I go out on the street and actively solicit candidates --

Q No, I don't think that a Deputy Commissioner would do that. I mean with respect to your official function in the Department, did you have a recruitment function?

A No.

Q There was recruiting going on during that time, was there?

A The Guardian Association had continuous, and the Hispanic Association had continuous recruitment efforts. Then there came a time on my advice -- there came a time when I advised Commissioner Murphy that we ought to assign a high-ranking black or Hispanic officer to a recruitment effort, and that was subsequently done,

and I believe the officer that was selected was a black Deputy Inspector, Charles O. Henry.

Q So that in fact your recommendation with respect to recruitment was carried out by the Police Department?

A Charles O. Henry was appointed to look into the recruitment problem, and he did do that, and he began analyzing and re-analyzing some of the work done earlier done by myself.

Q And there was a follow-up recruitment drive for exam 3014?

A There was personnel assigned for recruitment under Charles O. Henry.

Q And $500,000 was expended in that effort, wasn't there?

A I have no idea.

Q With respect to --

A I would be surprised if it was.

Q Well this document would indicate that.

Now with respect to recruitment, what was your purpose in suggesting this increased need for recruitment by the department?

A It seemed to me that the Department should have, given the balance that it had of minorities, that

it ought to have some unit that was dedicated to recruiting even if it did not have approval and responsibility under the statutes to do that, that it ought to be doing that anyway because it affected Police Department performance.

Q I see; and that was the suggestion that you referred to as being carried out by Inspector Charles O. Henry?

(Discussion off the record.)

(Question read by the reporter.)

A There was a question I was attempting to answer before when I was interrupted, that I did not get a chance to answer.

(Record reread by the reporter.)

A That is where I maintained, when you probably inadvertently interrupted me, that my other concern or functioning in the Police Department getting involved in that was as a result of some of the meetings we had. It was clear to me that the Department of Personnel was not doing that. In fact, on one occasion several funds were going to be supplied to the Department under the Department of Personnel budget so that we could have funds to engage in recruiting, but those funds were never forthcoming, so I felt if the Police Department did not do it

at that time it wasn't going to be done.

Q Now with respect to selection, you mentioned a suggestion that there be a merger of the Transit list and the Housing list?

A That is not correct. I said, "Departments" -- the Transit Department, Police Department and the Housing Department -- not "lists"; the "the Department."

Q Oh, then it was your suggestion that the entire Departments be merged.

A Yes.

Q And be considered as one Department.

A Refused, the way that it was in the past.

Q Are you familiar with when it was decentralized or broken up?

A I believe the Housing Authority probably runs back into the '50's, when it was finally pulled out.

The Transit Authority goes back earlier, to the mid-'50's.

Q With respect to the selection of police officers was there any recommendation -- excuse me, I believe you mentioned that there was a recommendation that the Department of Personnel takes steps to validate the exams that they were going to give to candidates for police officers; is that correct?

A That is correct.

Q Are you aware of the effort of the Department of Personnel in that regard in giving the contract for the '73 exams for a professional testing organization?

A I am aware up to the time I left that no validation of any exam was conducted.

Q That was in April 1973, so you wouldn't be familiar with the follow-up steps taken.

Are you familiar with the retrieval effort of the New York City Police Department?

THE COURT: For what period?

Q With respect to the lists that existed at the end of the freeze?

THE COURT: For what period? He doesn't have a familiarity after 1974.

What period are you asking about?

MS. CARROLL: From the period 1970 through '73.

Q You left in May, is that right?

A I think it was April, but it may have been in May.

Q I see.

A But somewhere, just prior to my leaving there was an operation a retrieval begun in the Police Department

in an effort to not lose the people that had been on the list so long during the freeze period.

Q With respect to the selection procedure for police officers, would it be your testimony that the Police Department intentionally discriminated against minority individuals?

A Miss Carroll, from personal experience I have taken Police Department Civil Service examinations, both entry exams and personnel exams. They gave the exams. They conducted the investigation. The result was discriminatory. They did a deliberate thing in giving the exams and in conducting the investigation. The result was discriminatory. I have to believe it was intentional.

Q On the part of the New York City Police Department?

A I believe on the part primarily of the New York City Department of Personnel, since they gave the exam, they had the jurisdiction to give the exam -- particularly the written exam, and certainly on the part of the New York City Police in investigating its own practices in screening, came to the admission at all of the high levels of the Department, that its practices were deliberately, in a variety of ways, not only the

PA-15, screening out minorities.

Q It was having the effect of screening out minorities?

A It was screening out minorities, and actively encouraging minorities not to come into the Police Department.

Q You would agree, then, these exams we shown to be valid by testing of whatever kind, then obviously the effect you talk about could not have been deliberate?

A I don't believe I can answer that question.

MS. CARROLL: Thank you. I have no further questions.

MS. STEINBOCK: I have no further questions.

THE COURT. Thank you.

THE WITNESS: Thank you very much.

(Witness excused.)

MS. STEINBOCK: Your Honor, you mentioned the time problem. I would like to make an offer of proof at this time.

The plaintiff had asked repeatedly for the statistics from the 1973 exam. Defendants have supplied us with a list and a breakdown by races and percentages, by score in the exams. We have a witness, a lawyer, who is a lawyer with the plaintiff Guardian,

you have to give information before they can get it.

Let us proceed.

MS. CARROLL: I would like to call Inspector McNulty to the stand as the defense first witness.

M I C H A E L J O H N M c N U L T Y, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CARROLL:

Q Can you tell us your present employment, please?

A I am employed by the New York City Police Department in the current rank of Deputy Inspector.

Q What is your present assignment?

A I am presently assigned to the Personnel Bureau as Commanding Officer of the Program Development Section, but I fulfill a secondary responsibility, which is to aid and counsel the Chief of Personnel on personnel matters.

Q How long have you been with the New York City Police Department?

A 20 years last November.

Q Can you give us some background information on your education, please?

A I hold a Baccalaureate Degree in Business Administration from the City College of New York. I com-

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pleted all class work and three-quarters of the thesis requirement for a Master's Degree in Public Administration at the City University, and I hold the Juris Degree of St. John's University School of Law, and I am admitted as an attorney in the State Courts of New York and also for this court and the Eastern District.

Q Can you tell us what your first assignment in the Personnel Bureau was?

A I was assigned to the Personnel Bureau in July of 1973 to carry out a minority improvement program.

Q Tell us the purpose of that program.

A The purpose of that program was to track as many Black and Hispanic candidates as possible to take an entrance examination for police officers which was scheduled in late 1973.

Q What was the genesis of this program?

A The program actually arose from a statement of objectives which the then new Police Commissioner intended to achieve during the early part of his administration. He became Commissioner in April of 1973 and identified some 16 or so top priority goals which he hoped to achieve at least in the first year of his administration. One of those was to develop and implement a minority group program.

Q In developing that master plan, did the Com-

missioner rely on any study done to attract candidates into the Police Department?

MS. STEINBOCK: I object. I do not think the witness is capable of knowing what the Police Commissioner thought.

THE COURT: He may answer or he may not. If he knows, he can answer, but if he knows how did he know.

A I do know that the New York Rand Institute conducted a study in 1970 and 1971 which resulted in a variety of recommendations designed to improve, or at least improve, the attraction of minority candidates for police examinations.

Q I show you a copy of a document and I ask you if you can identify it?

A Yes.

Q Would you state the name of the document, for the record?

A Minority Recruiting in the New York City Police Department, Part I, the attraction of candidates; Part II, the retention of candidates, Bernard Cohen, the New York City Rand Institute, May of 1971.

MS. CARROLL: I would like to have this marked.

xx (Defendants' Exhibit F marked for identification.)

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Q What was the recommendation, in essence, of the Rand study?

A Well, there were a number of recommendations.

As I recall, one of the principal recommendations was to appeal to minority candidates, rather to the minority community, to appeal to their service orientation, I should say, for police service.

Another recommendation was that the Police Department wished to attract and aid minority candidates in passing entrance examinations by designing a pre-examination preparation course; that the Police Department, or at least the City, should mount an immediate campaign dircted at minority candidates.

There were several other recommendations which I don't recall exactly at the moment.

MS. CARROLL: Your Honor, I would request that this exhibit be introduced as Defendants' Exhibit F in evidence.

MS. STEINBOCK: I object to that. Under the ground rules I believe your Honor set for the last time, counsel were asked to exchange exhibits they planned to admit. Ms. Carroll has, in fact, given me a number of exhibits. I have culled through what I was willing to introduce. I have never seen that exhibit, and she

has never supplied us with a copy.

MS. CARROLL: I left that task to others to give all the documents. I thought a copy was given to Ms. Steinbock.

However, your Honor, this is a document that the witness, Dr. Cohen, originally testified to in his testimony. It was a study conducted by the Rand Corporation at that time.

It is an oversight that she didn't receive it. I know that all the other materials that I intended to produce were shown to her.

3 MS. STEINBOCK: Dr. Cohen testified with respect to that report on cross-examination in questioning by Ms. Carroll. I have never questioned him about that report and, in fact, I have never seen that report.

MS. CARROLL: With respect to its authenticity there is no question. With respect to the notice, if Ms. Steinbock would like additional time --

THE COURT: I think the report should be received.

I will allow you to make any objections on the record you want. The testimony of the witness is that that was a partial basis for the Commissioner's efforts and, therefore, is admissible.

xx (Defendants' Exhibit F received in evidence.)

THE COURT: You may look at it. Since you have not had an opportunity to do so -- unhappily for all of us -- you may study it and if you need to cross-examine Mr. McNulty, then he will have to come back at some other time. I will give you that opportunity.

BY MS. CARROLL:

Q You mentioned the master plan prepared by the Commissioner. What priorities did that plan enunciate?

A I do know that there were 16 or 17 high priority items, and one of them was the development of a minority group program.

Q I show you a copy of a document. Can you identify that for the Court.

A Yes. It is labeled Master Plan, Police Commissioner, August 8, 1973.

MS. CARROLL: I would like to have this marked for identification as a defendants' exhibit.

xx (Defendants' Exhibit G marked for identification.)

THE COURT: The better practice is to have it marked before you give it to the witness, Ms. Carroll.

Q With respect to this master plan, was this used

by you in your program with the Personnel Bureau for minority recruitment?

A To the degree that it stated a high priority objective of the Police Commissioner, yes.

MS. CARROLL: I would like to introduce this in evidence.

MS. STEINBOCK: I would object to these exhibits and this testimony in that it relates to a recruitment program in 1973. This suit challenges the examinations up to 1970, and I think that the defendants' good faith as of 1973, an improvement program, is irrelevant to this suit.

THE COURT: It can't possibly be, can it? You are not only challenging 1970, but you are challenging practices for 1976 based on what occurred and what didn't occur in 1970.

MS. STEINBOCK: I don't believe so. We are challenging the layoffs which occurred in 1976 based on examinations up to 1970. We are not challenging any examinations between 1970 and 1976.

THE COURT: You are challenging, actually, 1976 based on things that occurred. As a matter of fact, that's the whole purpose of Ms. Carroll telling us the status of matters. You are opposed to any hiring or any-

thing like that that occurs until this matter is settled. You can't be relying only on 1970.

MS. STEINBOCK: I think that the layoffs and hiring are fixed by statute related to practices up to 1970, the ones we are objecting to, and in that regard any practices or exams or policies at any point after 1970 is not --

THE COURT: You may be right, but I am not entirely certain of that. In any event, I will receive it.

MS. CARROLL: I think, your Honor, this colloquy indicates the degree to which the plaintiffs' concept of the case and the Court's concept of the case is at significant variance. The plaintiffs think their case dates from an examination in 1970, and that's why they are challenging examinations that date from 1970 and back to 1968. The Court, on the other hand, believes that the thrust of the plaintiffs' case is a layoff in 1975. It is clear that those layoffs have no independent --

THE COURT: Ms. Carroll, please. I am here for an evidentiary hearing, and you and Ms. Steinbock prefer oral argument. I am not here for that. Let's have the hearing. You are going to have plenty of time to submit your documents. I will hear what you want to

say in argument in briefs.

xx (Defendants' Exhibit G received in evidence.)

THE COURT: Let's examine the Inspector, please.

BY MS. CARROLL:

Q Can you describe, please, for the Court, the chronological development of the minority recruitment program?

A I was assigned to the Personnel Bureau in July of 1973 to implement a minority recruitment program. In my discussions with people who had some involvement in the Police Commissioner's statement of objectives and direct consultation with him, I learned that a committee had been formed some months earlier to seek ways to develop strategies to attract more minority candidates for the upcoming police officer examinations. The few strategies that had been developed by the committee, I took those, then built upon them starting in July. One of my initial steps was to take the then existing recruitment squad, which consisted of two Sergeants and four police officers, and build that staff where it would have sufficient police recruiters to do a credible job.

As time went on, through the succeeding months, I implemented a number of strategies that had been developed in the earlier months.

Q What were the specific strategies of your program?

A The principal strategy was three-fold:

No. 1 was to mount a media campaign through newspapers, through radio spot announcements, television, through specific mailings to minority candidates, and through posters.

The second principal strategy was to design, develop, and implement a pre-examination preparation course for minority candidates prior to the written examination.

The third component, the third principal strategy, was what I called the grass-roots approach, that is, to work through civic, political and other institutions that had influence with minority youth, so that they could be convinced that the police service and a police career was both a desirable and socially beneficial profession for them to pursue.

Q Can you give us an example of the media campaign?

A We produced approximately 600,000 handbills of various sorts, some of which were paid by the City funds, and quite a bit of which was paid for by donors. There were two waves of handles, one produced around October and the second wave of handbills and posters late into

December.

THE COURT: Wait a minute.

I gather that Inspector McNulty's testimony is designed, at least, to show the present good faith of the Department in the area that is being attacked. I therefore don't feel that there is any necessity to go into any great detail. I think he can outline the program. I do not think it is necessary for us to go through the specifics of it. So far he has explained it very well. He has explained the aims and objectives, and so forth. I think that's appropriate.

MS. CARROLL: I would like to pursue the cost of this program.

BY MS. CARROLL:

Q Can you provide us with an estimation of the cost of this program?

A It would have to be a guesstimate. So much time and energy was contributed by so many people that a precise figure could not be calculated.

I do recall at the end of the program, December, 1973, trying to cost out those things which I could measure, and that figure was somewhere in the vicinity of $400,000. That was in dollars that had been expended for preparation of the booklets, for posters, and so forth. A guesstimate

would be one million bucks, a conservative figure, in terms of the time and energy contributed by the people throughout the City.

Q Were City agencies involved, other City agencies, in that effort?

A Yes.

Q Were there any outreach units in the minority communities?

A Yes.

For example, the Council Against Poverty had between 25 and 30 centers located in the minority areas, and we utilized the directors of each one of those centers as a satellite recruiter through whichwe funneled the campaign literature and the like, and there were other agencies.

MS. CARROLL: I would like to have this marked as the next defendants' exhibit.

xx (Defendants' Exhibit H marked for identification.)

Q I show you a copy of this document. Can you identify it for the Court?

A Yes. This is labeled New York Personnel Bureau EEO Minority Recruitment Campaign, Fiscal Year 74-75; 1973 Recruitment Campaign, Appendix 3.

It is essentially a report that I prepared in the Summer of 1973.

Q Can you tell us the success achieved in the minority recruitment drive vis-a-vis the 1973 entry level of police officers?

A We know that 53,000-plus took the examination of the 117,000 pre-applications that were filed. Of those 53,000 that took the examination, based upon an ethnic census on the day of examination, approximately 31 per cent of the test takers were Black and 17 per cent were Hispanic, and 48.9 per cent minority representation among the test takers.

Q How does that compare for prior examinations of police officers given by the Police Department?

A I could not give a precise comparison. It is my distinct impression that that representation was much higher than any that had ever before appeared.

THE COURT: I cannot take judicial notice of that, but it certainly would appear to me that that would be so. That's a very high percentage.

Q So in terms of your goal of minority recruitment you were able to achieve, did you say 48 per cent minority participation in this examination?

A Correct.

Q Following the 1973 examination --

THE COURT: This is 1973?

MS. CARROLL: 3014.

THE COURT: What were the figures in terms of success? Do you have that?

THE WITNESS: Not at my fingertips. There were abou t43,000 or 44,000 that actually passed the written examination of the 53,000 that took it.

THE COURT: You don't have a breakdown of that?

THE WITNESS: No, I don't have that.

THE COURT: Since you have those other figures, I would be interested in the figure of those who succeeded technically.

MS. CARROLL: I believe, your Honor, there was a chart previously submitted by Sergeant Sheffey that was the Guardians breakdown of it.

MS. STEINBOCK: I don't believe so.

THE COURT: In any event, I think the Inspector will have those figures. I would like to have those.

Q As a follow to this minority recruitment program, did you take any further efforts with regard to minority participation in the Police Department?

A The minority recruitment program I envisioned was two-fold. One was to stimulate as much minority

interest in the 1973 examination as possible, but following that it would be a funded retention program because it was my knowledge at that time that minority candidates tended to drop out of the selection process to a larger extent than white candidates after they had successfully passed the examination. I felt that we had to do that, to continue the recruitment effort, to make sure that those candidates who were successful were retained in the system; and, secondarily, that we continue in a much more professional way than in the very hectic way that we went about conducting the campaign; that we would continue with a more professional low-key long-term recruitment effort so that for the next examination, when and if it should ever come up, we would have formed a very good base for attracting minority candidates to that examination.

As a result we drew up a grant request to the Federal Government for funds to support that effort. We were successful in securing some $103,000 for the retention aspect of that grant request. LEAA at the time could not honor the dollars for the other part of that request.

Q How much had you requested from LEAA in your grant application?

A I think officially $222,000, although there had been preliminary negotiations where I had met with the

Director of the Criminal Coordinating Council and others who control the allocation of Federal funds, and I was asking for $500,000. The official grant application was for $222,000, of which we got out $103,000.

Q What was the description of the program, the retention program? What was its purpose?

A The purpose was --

THE COURT: Please. I have asked you not to go into the details of the program. Inspector McNulty has explained it and I think I understand it. It was discussed at the last hearing. As I understand it, there was an effort to recruit minority group members. Those who passed the examination, even if they passed it, there was a problem as to their staying through the various steps that had to be taken to end up on the Police Force. You made an effort to keep them there. That's all I want to know.

MS. CARROLL: Your Honor, I think the purpose of the defendants' defense in this case, and especially in view of the Supreme Court's recent inquest in good faith efforts by departments the defendants should be given an opportunity to put in substantial fact evidence with respect to our efforts. I do not believe that the evidence that we have attempted to put in has been repetitious at all.

THE COURT: I don't want to know the details. I don't need to know the details of what he has done. He has indicated he got $103,000 in a grant from the LEAA in terms of the retention program and he has told me what that program was about. That's enough.

Let's move on.

5 Q When were the funds provided by the LEAA used? During what period?

A I think the funds were actually received some time in early 1974. I had been transferred prior to the actual receiving of the funds, and the administration program evolved to the subsequent Captain who was commanding.

MS. CARROLL: I have no further questions of this witness.

MS. STEINBOCK: Your Honor, I would ask that during my cross-examination of the Inspector I be allowed to consult with Sergeant Sheffey who is the president of the Guardians Association and who participated in the recruitment drive; he is now in the EEOC Unit of the Police Department.

THE COURT: You can have the Sergeant sit up there with you. I have no problem with that.

CROSS EXAMINATION

BY MS. STEINBOCK:

Q You have testified that the recruitment program began in 1973; is that correct?

A The one I commanded, yes.

Q You have testified, I believe, that the Rand report, which was admitted into evidence, was done in 1970-1971; is that correct?

A Published in 1971, yes.

Q You testified that this report was the basis of the Commissioner's recruitment program; is that correct?

A I don't think it was the single basis. It was one of the things he might have considered in identifying the priority objectives to be achieved.

Q Do you know what else he considered in developing the recruitment program?

A In my conversations with him it was very clear to me that he was deeply concerned about the alienation that had existed between the police and the community as evidenced by large-scale demonstrations in the latter '60s and he felt it was imperative that we increase the number of minority groups in the Police Department to do two things: one, to improve our relationships with minority communities, but also to convince minority youth that the police service

was a viable and social and beneficial career for them.

Q Inspector, do you know if any other documents or memoranda from the Police Department or the Personnel Department, or any other written documents, that the Commissioner relied on in developing the recruitment program?

A No. I would suspect there are a number of memoranda and a number of reports produced by Deputy Commissioners with respect to community affairs.

Q I show you Plaintiffs' Exhibit 21 for identification. I ask you if you have seen this?

A (Pause) No. I don't recall seeing this document.

I point out that it pre-dates my appointment to the Personnel Bureau by a year and a half.

Q You were assigned to the Personnel Department --

A July, 1973.

Q So you have no knowledge of anything that took place in the Personnel Department before that date?

A No.

I have knowledge of things that happened in the Personnel Bureau because the author of that particular report who was assigned to the Personnel Bureau at that time was one of the people that I interacted with quite a

bit after my assignment in July of 1973. I don't recall this specific report, though.

Q Have you seen this document marked as Plaintiffs' Exhibit 22 for identification?

A No. I don't recall seeing it. I know the author of that report. I had discussions with him.

Q Inspector, isn't it true that the Commissioner and the Police Department knew that the test that had been prepared at that time discriminated against minorities and they were afraid of litigation, and that was the reason for the recruitment program?

A I doubt that very much. I don't think that the Commissioner was running scared.

Q The Rand report was prepared in 1970-1971. You testified that the recruitment program began in 1973. Do you have any explanation for the intervening three years before the recruitment program began?

A There was a job freeze imposed by the Mayor in the early '70s, 1971, 1972, and part of 1973. The recruitment effort, as such, was not initiated by the Department in 1973. What I have been testifying to is the fact that I commanded a recruitment effort that commenced in 1973, but the Department had been engaged in that activity going back to 1966.

gp McNulty-cross

Q You don't know of your own direct knowledge because you did not participate in that?

A But in discussions with other people I knew that.

MS. CARROLL: Would you direct counsel to let the witness complete his response, your Honor?

THE COURT: He has completed his response. I think Inspector McNulty can take care of himself.

MS. CARROLL: I think he should be permitted to state a complete answer to the question and should not be interrupted.

MS. STEINBOCK: Your Honor, at this time I would like to introduce into evidence Plaintiffs' Exhibits 21 through 25, which are exhibits, I believe, L through P to the Crowley affidavit, which are memoranda and documents from the Police Department between the years of 1970 and 1972. This goes to the recruitment program and the reasons for the recruitment program.

MS. CARROLL: I object to the introduction of these documents specifically because I don't know what they are doing at the present time being introduced through this witness. This witness has indicated he has not seen these documents. If plaintiffs' counsel wishes to introduce them, she will have to produce the people who

wrote these documents. He has no knowledge of the authenticity or anything else with respect to that. He has stated he never saw them before.

MS. STEINBOCK: One of the problems comes from, I believe, some confusion as to whether the exhibits to the Crowley affidavit are received into evidence for the purpose of this hearing. My understanding was that they were, but then it was not clearly reflected on the record. I would not do this in this way at this time, but it was not clear.

MS. CARROLL: Your Honor, you previously ruled at a session that the exhibits for that affidavit were not in evidence for purposes of this hearing. There was an evidentiary hearing and you wanted the documents, or any evidence, specifically introduced here --

THE COURT: I think I did that, yes.

MS. STEINBOCK: I think the record reflects that.

THE COURT: I believe I indicated to you that any documents, even though they were exhibits, affidavits, if you really wanted them made a part of the record you should introduce them. In fact, I think I told counsel that was here before that at the first and second hearing -- maybe it was Mr. Richland, or Mr. Crowley -- that it had to

be done that way.

MS. STEINBOCK: I apologize then for introducing this at this time.

I believe under Rule 801 of the New Federal Rules of Evidence these can be admitted into evidence without producing --

THE COURT: You have to establish that they are from the Police Department. If you can establish that they are their documents, they can be admitted.

MS. STEINBOCK: Your Honor, I would ask that Ms. Carroll, who has copies of these, be asked if these are, in fact, the documents from the Police Department, otherwise I will ask that the authors of these documents, which are denominated Police Department documents,be put on the stand.

MS. CARROLL: I have already indicated to Ms. Steinbock that I have no knowledge of the authenticity of these documents, and if she wants them introduced she will have to produce the authors of them, so that, No. 1, they will be properly introduced, and, secondly, I could cross-examine the person who prepared them with respect to their content ane accuracy. I told her that prior to this hearing, and it has nothing to do with this witness.

THE COURT: I don't suggest she has to go that

far. She has to establish if they have authenticity, that their bear the imprimatur of the New York City Police Department. If they are documents that were issued by the Police Department, that is sufficient.

MS. STEINBOCK: Your Honor, these documents were produced during discovery by the defendants themselves, which is how we obtained these documents.

THE COURT: You and Ms. Carroll have to talk. If you want to prove the documents get somebody to introduce them and indicate that they come from the Police Department.

MS. STEINBOCK: I have no further questions of this witness.

THE COURT: You are excused.

(Witness excused.)

MS. CARROLL: Lieutenant Brennan will conduct the examination of the next two witnesses, your Honor.

MR. BRENNAN: I call Captain Henry E.Cetina to the stand.

1 gp

2 H E N R Y E. C E T I N A, called as a witness on
3 behalf of the defendants, being first duly
4 sworn, testified as follows:
5 DIRECT EXAMINATION
6 BY MR. BRENNAN:
7 Q Youare employed by the New York City Police
8 Department?
9 A Yes.
10 Q In what capacity?
11 A Commanding Officer of the Police Department
12 Equal Employment Opportunity Office.
13 Q How long have you held that position?
14 A Since August of 1974.
15 Q How long have you been a Captain in the Police
16 Department?
17 A Over three years, since May of 1973.
18 Q How long have you been in the Police Department?
19 A 18 years last November.
20 Q In your role as Commanding Officer of the Office
21 of Equal Employment Opportunity, can you identify the
22 functions of that office?
23 A The functions of the Equal Employment Opportunity
24 Office are to carry out affirmative action programs,
25 investigate employment discrimination complaints based on

1 race, sex, age, and carry out all equal employment
2 opportunity programs for the Department.
3 Q Is it one of your specific functions to prepare
4 an equal employment opportunity program?
5 A Yes.
6 Q In the preparation of this equal employment
7 opportunity program, do you gather statistics about the
8 ethnic distribution of the Department?
9 A Yes.
10 Q In what areas do you gather these statistics?
11 A Recruitment, selection, hiring, promotion,
12 assignment, transfers.
13 Q Did you follow any guidelines in the preparation
14 of this Equal Employment Opportunity Program?
15 A Yes.
16 Q What were some of those guidelines?
17 A The Law Enforcement Administration -- they have
18 an Equal Employment Opportunity Program -- they have an
19 Equal Employment Opportunity Program manual.
20 Q This Equal Employment Opportunity Program, is
21 that compiled into a specific document?
22 A Yes.
23 MR. BRENNAN: I ask that this be marked as
24 Defendants' Exhibit I for identification.
25

xx (Defendants' Exhibit I marked for identification.)

Q I show you this document and ask you to identify it, if you can.

A This is the New York City Police Department Equal Employment Opportunity Program for fiscal year '74-75.

Q Is that the official program of the Department?

A Yes, it is. There is a statement here signed by the Police Commissioner.

MR. BRENNAN: I would like to offer this as Defendants' Exhibit I in evidence.

MS. STEINBOCK: No objection.

xx (Defendants' Exhibit I received in evidence.)

Q In preparing the Equal Employment Opportunity Program, did you compile statistics of the el gible population for the position of police officer?

A Yes.

Q Would you identify what the eligible population is considered to be?

A Based on the New York, Standard Metropolitan Statistical area -- are you asking me the population for males, females?

Q First, identify what is the Standard Metropolitan

Statistical area. Is that the statistical base?

A That's the base that everyone uses.

Q Who produces that base?

A The United States Department of Labor.

Q From that were you able to identify the eligible population for the position of police officer?

A Yes.

Q Was that eligible population people in the age group of 20 to 29?

A 20 to 29, and at least 12 years of education.

Q Do you recall --

THE COURT: What am I supposed to be receiving now?

MR. BRENNAN: I want the witness's --

THE COURT: You have already testified for him. What I want to know is what this is supposed to be. This is the eligible population for what? Police officer?

THE WITNESS: Yes.

THE COURT: Who gave you this statistic?

THE WITNESS: This was published by the United States Department of Labor called SMSA, the Standard Metropolitan Statistical Area.

THE COURT: You find people in that age group,

but how did you reach the conclusion that that's the eligible population? I am interested in that.

THE WITNESS: It is recommended in all the guidelines that we have.

THE COURT: From where?

THE WITNESS: From the City Commission on Human Rights, the Department of Justice, and --

THE COURT: That's the age limit?

THE WITNESS: No, no. The age limit is determined by the requirements for police officers for New York City, the Department of Personnel.

THE COURT: Who has recommended 20 to 29? Whose recommendation is that? Where did that figure come from?

THE WITNESS: The requirements.

THE COURT: Male or female?

THE WITNESS: Both. The requirements of the New York City Department of Personnel for the position of police officer: you must be between 20 and 29 years of age.

THE COURT: So you have to be 20 years old to be a policeman?

THE WITNESS: Yes.

THE COURT: And you cannot be over 29?

THE WITNESS: That's right.

THE COURT: I don't know what this is all about. If that's so, you could have found that out in two questions without all this dealing as if he is doing something. That doesn't mean anything. The eligible population has been determined by the Police Department.

MR. BRENNAN: I want to develop the parameters of that population.

THE COURT: We could have saved about 20 minutes on that.

Q is there also a basic educational requirement of the Police Department?

A Yes. High school diploma or equivalency.

Q According to these SMSA statistics, what percentage of the eligible population, eligible male population, was white, if you can recall?

A About 83per cent.

Q Do you recall what percentage of the male popoulation in the SMSA statistics is black?

A About 12-1/2 per cent.

Q And what percentage is Hispanic?

A Males, 4 per cent.

Q What percentage of the SMSA eligible female population is white?

A 80 per cent.

Q And what per cent of that SMSA eligible population, female, is eligible?

A 15-1/2 per cent.

Q And what per cent is Hispanic?

A 4-1/2.

THE COURT: What is SMS again?

THE WITNESS: Standard Metropolitan Statistical Area?

THE COURT: The area you are looking at is the New York City area?

THE WITNESS: It says to give, like agencies, an idea as to how many people would be eligible and what percentage of the minorities --

7 THE COURT: Why did you do this for New York City? Why did you limit yourself to this? Those figures are for the New York City metropolitan area.

THE WITNESS: The metropolitan area, which includes Nassau, Westchester and surrounding --

THE COURT: Is it a requirement of the Police Department that you have to live in that area if you are a police officer?

THE WITNESS: Yes.

THE COURT: You have to live in the area you

have described?

THE WITNESS: Yes. It is an area that people can reasonably travel to and take the test.

THE COURT: I thought you could become a police officer in New York City if you lived in Florida?

THE WITNESS: Yes, but if you have to live in these areas prior to employment.

THE COURT: You could move out as soon as you get appointed; is that correct?

THE WITNESS: No.

BY MR. BRENNAN:

Q In preparing the Equal Employment Opportunity program, did you compile statistics breaking down the uniformed force by race?

A Yes.

Q Did you compile statistics in the breakdown, percentage breakdown, of the uniform force, that is, the force of sworn officers, by race?

A Yes.

Q What per cent of the uniform force, according to the Equal Employment Opportunity program, fiscal year '74-75, is minority?

A 8 per cent.

No, excuse me. You mean minorities? 11-1/2

per cent.

Q Did you compile similar statistics for the year, fiscal, '73-74?

A Yes.

Q In that period, what was the percentage of minorities?

A About 10-1/2.

Q In preparing the Equal Opportunity program have you compiled the statistics on the ethnic breakdown of new recruits in the Police Department since January of 1973?

A Yes.

Q Were you aware that there was a freeze prior to 1973?

A Yes.

Q How long did that last?

A It lasted for about three years. From the very early part of 1970 to the very early part of 1973.

Q So there were no new appointments to the Department's uniform force during that period; is that correct?

A Essentially the answer would be no. There were few appointments because of the trainees thatwe had who had become 21, but that was just a handful.

Q Approximately how many recruits have entered the

Department since January of 1973?

A 4700, a little over 4700.

THE COURT: Minorities or total?

THE WITNESS: Total recruits.

Q What percentage of these were minorities?

A 23 per cent.

Q You testified that the function of the Equal Employment Opportunity Office was also to conduct an affirmative action program?

A Yes.

Q Are you aware of the minority recruitment study conducted by the Rand Institute in 1968 and 1969 published in a document, 1971, which is now marked as Defendants' Exhibit F?

A Yes.

Q Are you aware of the principal conclusions of the Rand study?

A Yes.

Q What were those conclusions?

A There were two main conclusions: No. 1, that we were not making sufficient efforts to attract a greater number of minorities; and, No. 2, once having attracted them and having successfully passed the written part of the examination for police officer, we should make efforts

to retain them in the selection process.

Q Did the Department implement any affirmative action programs based on these conclusions?

A Yes.

Q You heard Inspector McNulty testify to the minority recruitment campaign. Were you aware of the minority retention program at that time?

A Yes.

Q What role did you play in the minority retention program?

A As a logical follow-up to his recruitment campaign he had submitted a request for a grant of $103,000 which he mentioned previously. He was transferred to the main part of the Personnel Bureau and I was transferred as Commanding Officer of the Equal Employment Opportunity Office to carry out this retention program.

Q You were in charge?

A I was the Project Director.

Q Can you describe the unit you had working for you at the time?

A The minority recruitment section of the Police Department was merged prior to my coming there with the Equal Employment Opportunity.

Q How many people did you have working for you?

A 15.

Q How did your program, the retention program, operate?

A The stated objective of the retention program was to increase minorities in the New York City Police Department by retaining those in the selection process who had passed the written part of the examination for police officer.

The major technique used was to hire civilian counsel who would personally counsel all minorities on the list and they would encourage and maintain interest for all minorities that passed the test.

Q How were those counsels paid?

A On an hourly basis.

Q Where would the funds come from?

A The funds came from LEAA, the Federal Law Enforcement Assistance Administration, on a grant which was mentioned before.

Q Was there any condition in the grant as to the race of the counsellors?

A Yes. The grant specifically stated that the counsellors were to be minority, male or female, and we hired 17 of them, males and females.

Q Where did these counsellors operate?

A They were assigned to work in precincts, in several scattered precincts throughout the City where there were heavy concentrations of minorities.

Q Do you have any estimate as to how many people were contacted through this counsellor program?

A Yes. Over 2500 candidates were counseled.

THE COURT: Are you telling me there were 2000 Blacks and Hispanic-speaking people that took the examination and passed?

THE WITNESS: Yes. Among the first 20,000 successful applicants we contacted -- we made efforts to contact every Black and Hispanic on the list through the medium of the 17 civilian counsellors.

Q What was the purpose of the counseling?

THE COURT: He just told you that.

MR. BRENNAN: I don't believe he did.

THE COURT: He did.

The purpose is retention. They need personal counselling. That's the purpose of it.

Let's move on. I understand that.

MR. BRENNAN: I think it is important to have the witness tell us what he did do, what the counsellors did with respect to attempting to retain these people in the program.

gp Cetina-direct

THE COURT: Go ahead.

A In counselling these candidates we noticed there were areas they needed assistance in: to obtain high school diplomas, equivalency diplomas; driving licenses; any preparation they needed with respect to background and investigation forms which in the past gave them trouble, they were assisted in those areas.

Q Is it a requirement of the Police Department that you have a driver's license at the time of your appointment?

A Yes. Minorities tend to have less driver's licenses than whites in the same age groups.

THE COURT: You mean you have to have a driver's license in order to be a policeman?

THE WITNESS: You have to drive a police car.

THE COURT: That leaves me out.

Q You mentioned also a background investigation. What are the requirements of candidates in the Police Department with respect to background investigation?

A There is a background investigation form called a PA-15. Unless this form is satisfactorily filled out you cannot be appointed. Our goal was to get all minority candidates through the civilian counsels to complete those forms which had given them a lot of trouble in the past.

They tend to become discouraged and not return them or keep appointments. We would instruct them how to dress, how to conduct the interview -- any area that they might need assistance in.

8 Q In relation to other affirmative action programs, do you have any knowledge of a community service officer program?

A That was included in our Department.

Q Can you explain how that program operated?

A The community service program is still in existence today. We have approximately 900 members of our Police Department who are civilians. Most of them are minorities. In fact, I think there is only one white among the 900 community service officers. It sort of serves as a work training program. The goal is that through association with police officers the community service officer would take the police officer's examination and eventually become a police officer.

Q How is this funded?

A This is a Federally-funded program.

Q Are those officers paid?

A Yes. Approximately $10,000 a year.

Q Do you know any of those officers who have since passed a Police Department examination that have come on the

Department?

A That have passed and come on? I can't recall the number offhand. I would say 30.

Q Do you have any knowledge of a cadet program being operated by the Police Department?

A Yes.

Q Can you describe how that program operates?

A This program is, essentially, a minority-oriented type program that the Police Department seeks minority candidates and they teach thembasic Math and English skills so they will be able to take a Civil Service test in the law-enforcement field and eventually become appointed.

Q Are they paid?

A About $80 a week. They are entitled to a program -- it runs about six months, the program.

Q Do you know of any graduates from the cadet program that have successfully entered the Department?

A I cannot recall the figure. I know they have entered the Department.

Q Is there a figure in the Department?

A Yes. We have trained approximately 400 of these cadets.

Q Are you aware of a program in the Department

of selective certification for Spanish-speaking candidates?

A Yes.

Q Would you explain how that operates?

A At the time of taking the examination for police officers, as a result of Inspector McNulty's recruitment campaign, one of the provisions was that those who expressed a desire to take these Spanish oral examinations -- not a written test -- would so indicate it on the test form. After the test they were called for special Spanish oral examination by the Department of Personnel. Those that pass now could selectively be certified and appointed out of rank order, and this occurred in the first appointments made from this examination, 3014, in October of 1974 where 28 Hispanic, while of the highest number reached for all candidates was approximately 350 -- the Police Department reached up to 1600 for 28 Hispanics and appointed them on that basis.

Q What was the total complement of recruits appointed at that time?

A Approximately 164.

Q That is the total number appointed from examination No. 3614?

A No. Only about half of 164 were from 3614. There were other candidates appointed from prior lists.

Q Are you aware of a program initiated by the Department in late 1973 to hire from existing eligible lists from the Transit and Housing Police?

A Yes.

Q Can you explain how that operated?

A Yes. As best as I can recall, the Police Department had exhausted all of the existing lists for appointment to police officer, and being knowledgeable that there were a large number of minorities on the Housing Authority and Transit Authority police officer list, they broke the pattern with traditional appointing and appointed from the Housing and Transit police officers, which the Police Department had not done since the Second World War, I believe.

Q Do you know if any appointments were made from those Transit and Housing lists?

A Yes. I would say about 750 to 800 appointments were made.

Q Do you recall what percentage of those were minorities?

A 25 per cent. Somewhat less. Maybe 23 or 24 per cent.

Q Would you say it was closer to 30 per cent? Maybe I could refresh your recollection if you wanted to

consult the EEOP.

THE COURT: If it is in that and you are burdening me with reading it, in any event there is no point in my having to listen to this.

A I don't think I recall. I think I recall 26 per cent.

Q Are you aware of a tutoring and counselling program conducted at the Police Academy for recruits?

A Yes.

Q What was the objective of that program?

A The Police Academy had been anticipating problems they might encounter, such as a higher potential dropout or attrition rate among their minority recruits.

Q What was the objective of this program?

A The objective of the program was to reduce attrition rates of minorities in the Police Academy by designating minority Sergeants and Hispanic detectives to especially counsel any minority -- anybody actually who encountered difficulty, academic or otherwise, in the Police Academy.

Q Was this service also available to whites?

A Yes. It was available to everybody.

Q Were there any restrictions on the program?

A They were not accepting those candidates who

were doing well academically. They tried to restrict it to those who were doing poorly.

Q Can you approximate the percentage of those recruits who took advantage of the program who were minorities?

A I would say 40 per cent.

THE COURT: Is this exhibit your latest program?

THE WITNESS: No. That ends June 30, 1975. The next one ends June 30, 1976, this year. We have to begin to prepare it on July 5th.

THE COURT: This is your latest?

THE WITNESS: Yes.

Q And your position as Commanding Officer of the Equal Opportunity Office of the Police Department, do you, personally, believe that a sincere effort is being made to increase the minority representation by the Police Department?

A Yes, I do.

Q Do you believe that these efforts have led to improvements?

A To improvements? Yes, I do. I think the figures will bear that out.

MR. BRENNAN: I have no further questions.

THE COURT: What did you expect him to say?

MR. BRENNAN: I expected an honest reply.

MS. STEINBOCK: Mr. Kimerling will cross-examine.

THE COURT: I will reserve my questions until it is over.

MR. KIMERLING: I will be happy to have the Court proceed. It may obviate some of my questions.

THE COURT: Please proceed.

CROSS EXAMINATION

BY MR. KIMERLING:

Q This Equal Employment Opportunity program is produced pursuant to requirements of Federal law, is it not?

A Yes.

Q Was it ever produced prior to 1972? What was the first time the program was produced?

A Fiscal year '73-74.

Q That was because it was required by Federal law; is that true?

A Yes.

Q In the beginning of this report that you produced there are these statistics you spoke of before, the SMSA statistics?

A Yes.

Q These are based on what document?

A SMSA.

Q Is that the only title of the document?

A It stands for Standard Metropolitan Statistical Area, the United States Department of Labor publication for every area in the nation.

9 Q The United States Department of Labor Publication and the statistics are as of what date?

A 1970 Census.

Q Through these statistics you try to define the eligible population for the Police Force; is that correct?

A Yes.

Q The statistics that you indicated, were they the summary of several compilations?

A Which statistics?

Q You indicated that Blacks made up 8 per cent --

THE COURT: 12-1/2 per cent.

A During fiscal year '74-75 they did.

Q Blacks made up only 12 per cent of those people eligible to take the test in the SMSA --

A Based on the requirements that existed at that time.

Q The first table you have in here is with respect

to the people on the work force; is that correct?

MR. BRENNAN: May the witness have a copy of the document, your Honor?

MR. KIMERLING: I would be happy to let him look at a copy.

Let the record reflect that the witness is looking at Defendants' Exhibit I in evidence.

Q Do you have a copy in your office of the statistics?

A Yes.

MR. KIMERLING: I don't believe these are the total figures in the statistics.

MS. CARROLL: Do you want a copy of the source?

MR. KIMERLING: Yes.

(Pause.)

Q Table 1 says participation of total work force by job category. Could you tell me why you excluded people who are out of work?

A (Pause.)

Q Could you tell me whether any of these statistics in this first part contain people out of the job force?

A No.

Q So they have been left out?

A No, they have not.

Q How have they been totaled into these figures?

MR. BRENNAN: I object to the question. I think he is trying to confuse the witness. The statistics he is referring to are not the basis for the figures. The statistics that counsel is referring to are the work force breakdown of the Police Force itself.

Q You indicated that -- and correct me if I am wrong -- your analysis of these SMSA statistics was that 12 per cent of those people eligible to become police officers were black; is that correct?

A No. 12 per cent of the black males. Black females comes to 27 per cent or 28 per cent.

Q Let's talk about males.

In that calculation, did you take into account people who are unemployed, who are not of the work force?

A No.

Could I explain something to you? These charts that we have here, 30 of them, we are required to prepare them in this fashion by the City Commission on Human Rights. The unemployment figures are in Chapter 6 and refer to our Comprehensive Employment Training Act. We prepared them exactly the way they recommend.

Q Your testimony is that of the people who are eligible to become police officers only 12 per cent of the males are black, and you did not include in that figure

unemployed males; is that correct?

A No. That includes all black males. It includes unemployed males.

Q Show me where this 12 per cent figure comes from.

A It is not in the book. It is a source recommended by the EOC, the City Commission of Human Rights. It is the guide that we follow.

Q No, no. This figure that you give us, this 12 per cent figure, is that in that book?

A Yes.

Q On what page?

A 5.2.

Q So that the statistic of 12 per cent --

A It turned out to be 12.7.

Q That came from the census report and you began by looking at the total available work force?

A Yes.

Q You divided up the total available work force down to those people between 20 and 29?

A We didn't divide it. We extracted it from the charts.

Q You looked at who had 12 years of education?

A Yes.

Q And that's how you came up with the bottom figure.

Does the total available work force reflect people who are unemployed? Do you know?

A Yes. It includes everybody.

Q Does it include people who have ceased to look for employment?

A Yes.

Q Who have ceased to look for employment?

A I would imagine that includes everybody, handicapped people, people whoare in prison, people who have jobs, people who are lawyers.

Q So that people who are lawyers are in these figures as well, professionals?

A If this is the available work force under these statistics, yes.

Q So that all those lawyers who are professsionals, some may be judges if they are young enough, are in these statistics as well even though they would not seek employment in the Police Department; is that correct?

A Yes.

Q Secondly, you say that you cut it off with those people who had at least 12 years of education. What is the requirement for appointment for the Police

Department?

A High school diploma or the equivalent.

Q Do you know how they reached the 12 years of education or the equivalency diploma?

A We tried to determine when these surveys are taken by the Federal Government how they determine the 12 years of education. We were unable to come up with that answer, whether someone who would have an equivalency diploma would mark down 12 years or not. For all practical purposes they may have it. They ask how many years of education.

Q Those who put down 12 years or more are included in the census in that category.

So it does not include those people who have a high school equivalency diploma because they may well have not --

MR. BRENNAN: I object to that.

THE COURT: One thing I am certain of, and that it is not a question. That is a statement.

Q In your experience in the area of minority improvement, what percentage of the Blacks and Hispanics held academic high school or 12-year diplomas compared to those that held high school equivalency diplomas?

A I don't know that. I don't know the answer to

that.

Q You don't need a high school diploma to take the examination?

A No.

Q You need it at the time of employment?

A Yes.

Q Some of your efforts are to help people get their equivalency diplomas for an appointment?

A Yes.

Q Nevertheless, these statistics only include those people who already have high school diplomas?

A Right.

Q So it excludes eligible people to take the examination and eligible people to become members of the Police Force who do not have high school diplomas; is that correct?

A That's correct.

THE COURT: I think your emphasis is somewhat misplaced. The question, as I see it in regard to the work that the Captain is talking about, is not whether it is the best program in the world or whether it is conclusive, but the issue is whether they are making a good faith effort.

MR. KIMERLING: I think that's what we are

1 gp Cetina-cross
2 talking about. I think there may be some question, points
3 in time later in this case, as to whether or not the
4 Police Force reflects the minority population, the
5 eligible minority population.
6 THE COURT: That's another question. You are
7 not getting at it. Ms. Carroll is introducing that
8 evidence, as I understand it -- maybe I am wrong -- to
9 show that the Police Force had begun at some point a con-
10 centrated effort of some kind which he feels is relevant
11 to a consideration to attempt to attain minorities in the
12 program.
10 13 MR. KIMERLING: If Corporation Counsel will
14 stipulate that these statistics do not properly reflect
15 those people eligible to become police officers, minority,
16 white, or otherwise --
17 THE COURT: That's not the issue. You can't
18 argue in that regard. You are approaching him in terms
19 of the kind of complaint. You think they could have a
20 better plan even if they are in good faith. I don't think
21 that goes to the issue.
22 MR. KIMERLING: I think it goes to the issue
23 of their success. They measure their success in terms
24 of --
25 THE COURT: That's not the point either.

It was not introduced in terms of success. The whole purpose was to try to show, I think, that the Police Force recognized their obligation and need to recruit minorities and they tried to do it, and this man is the head of the program. It is a question of good faith. That's all it was introduced for, I understand.

MR. KIMERLING: If that's all it was introduced for, and it does not have to do with the --

THE COURT: I am not even certain, to be frank with you, how relevant it is. In any event, I understand his purpose is to show the Police Force at least, since 1973, has been attempting to operate and improve its performance in this area.

MR. KIMERLING: I hope your understanding is correct. I don't want it to be met by defendants' briefs suggesting that only 12 per cent of the available market for jobs in the Police Force is Black or 4 per cent is Hispanic. I think these statistics are absolutely incorrect.

THE COURT: You have answered the question. You talk on like Ms. Carroll and Ms. Steinbock. You like to talk rather than ask questions.

Let us proceed.

BY MR. KIMERLING:

Q You suggest as part of your program you told people like to dress and conduct themselves at the PA-15 interviews, the background investigations. Why is that necessary?

A Maybe it was not. We tried to get them to make a solid appearance.

THE COURT: Because of the fact, it would seem to me, if you want people to pass an examination, to succeed, and to be retained, you definitely want to put them to put their best foot forward in front of the people selecting them.

That kind of question is ridiculous.

THE WITNESS: There is a common-sense approach to this.

Q You testified that certain people were appointed from the community service officer training program. Do you know whether or not those men are presently laid off or on the job?

A No, I do not.

Q Do you know when they were appointed?

A No, I don't.

Q When was this program instituted?

A I can't recall that.

Q Was it instituted after 1972?

A It might have been instituted some time around that.

Q How long were they in the program before they could take a test to be appointed?

A Whenever the test came up.

Q When was that?

A 1973.

Q Are there any men on the Force that were appointed from the 1973 examination?

A No.

Q So that none of these men are still on the Force?

A No.

I'm not sure.

MR. BRENNAN: I object to this line of questioning. It is totally irrelevant. The idea is that the Department made this effort. Whether the later layoffs prevented the success of the program is totally irrelevant to our present position.

THE COURT: Really? That's an interesting position to take. It is a very interesting position to take. In fact, that was the very question I was about to ask.

Q Do you know whether or not these men were given any credit in terms of seniority for the time they served as trainees in the community service officer branch?

A I don't believe they were.

THE COURT: Let me ask the question I was trying to wait for. I will not continue his hearing past 7 o'clock.

I assume that whatever success you and Mr. McNulty achieved in improving the percentage for minorities for the work force, that that has been disseminated by virtue of the City's position and the layoffs?

THE WITNESS: Yes.

MR. KIMERLING: May I probe one or two more areas, your Honor?

BY MR. KIMERLING:

Q You say the selected certification of Spanish-speaking officers was part of the Equal Employment Opportunity program?

A It is included in there as part of the EOP.

Q Were these persons appointed because they were Hispanic or because they were Spanish-speaking?

A Spanish-speaking.

Q Why were they appointed because they were Spanish-speaking?

gp Cetina-cross.

A The Department of Personnel and the New York City Police Department thought there was a greater need for those applicants so we could bridge the gap between English-speaking residents and Spanish-speaking residents of the City.

Q There were not sufficient officers on the Force that spoke Spanish?

A I don't know if that's correct.

Q Do you consider a list, a Transit Authority list and a Housing Authority list, predominantly minority, when it has 26 per cent minorities?

THE COURT: Is that his testimony?

THE WITNESS: What was the question?

Q You testified that the Department broke with tradition after it had exhausted its own list and hired from the Transit Authority and the Housing Authority because those lists were composed of predominantly minorities. I am asking you whether, in your opinion, 26 per cent or 30 per cent is predominantly minority?

THE COURT: That question is rhetorical. It answers itself.

A It was the tail end of the Transit Authority and Housing Authority which contained the greater number of minorities.

THE COURT: That's what I thought.

Q You are in this field of recruitment. Why do you think the Transit Authority and the Housing Authority have more Black and Hispanics applying and passing their exams?

MR. BRENNAN: I object to that. It is irrelevant.

A That would be difficult for me to answer.

THE COURT: I am inclined to think that's irrelevant.

The objection is sustained.

I am curious, Captain. How do you define it?

THE WITNESS: We take them straight from the sources that are given to us from the EOC guidelines. They define minorities as Blacks, Spanish surname Americans, aged Americans, American Indians, and others, which include Aleutians.

THE COURT: How do you identify Blacks?

THE WITNESS: We conduct a Department-wide survey.

THE COURT: By looking at them?

THE WITNESS: Looking at them and by knowledge of what a person himself identifies with.

THE COURT: What about Spanish-speaking, those

that speak Spanish?

THE WITNESS: Yes. Whites that speak Spanish are not identified as Hispanics.

THE COURT: You mean white Puerto Ricans therefore are not?

THE WITNESS: They are culturally Puerto Rican. We identify them as Hispanics if they so wish to be identified.

THE COURT: When you talk about Hispanics, you are talking about dark-skinned Spanish-speaking?

THE WITNESS: No. All who identify themselves as that.

We have a person in the Police Department who is, perhaps, 75 per cent white and 25 per cent black but who wishes to identify with blacks. That person is identified as a black.

THE COURT: That I understand, but I thought you told me that white Spanish-speaking people were not identified as Hispanics?

THE WITNESS: But not white Spanish-speaking. Someone of Irish extraction who has a Master's Degree in Spanish, he is still a Caucasian. He could take the Spanish oral test and pass, but he is not identified as Hispanic.

11

THE COURT: The people who are natives of some Spanish country, Mexicans, Puerto Ricans, or Spaniards, they would be identified as Hispanic?

THE WITNESS: Yes.

BY MR. KIMERLING:

Q You said there was a tutoring or counselling program at the Academy because you anticipated a high dropout rate for minorities. Why did you have such an anticipation?

A Many of the guidelines that we have in the Police Department, one of them specifically states that a proper EEO program should anticipate problems. They seem to think that's the best type of practice.

Q Why do you anticipate such problems at the Academy?

A This is a self-initiated program by the Police Academy. This began in 1973. I was not there in Equal Opportunity. They initiated that themselves.

Q Isn't it the practice of the Academy to tutor and help anyone who any difficulty in passing the Academy test?

A Yes.

Q But there had to be an institution of a minority program, a designated minority program, in 1973?

A It was not called a minority program. It was called a special candidate counselling and tutoring program.

THE COURT: Mr. Kimerling, you are not really probing for information. You are arguing with the Captain. That's what you are doing.

MR. KIMERLING: I guess I proceeded from a basis of not questioning the good faith of the Department, and that's why I found myself in argument. I apologize to the Court.

THE COURT: How many more witnesses do you have?

Off the record.

(Discussion off the record.)

THE COURT: We will call it a day. We will adjourn until the next time.

I have a note here -- nobody mentioned it -- with respect to Exhibits 15 and 16 marked for identification. That is still pending.

MS. STEINBOCK: I wanted to mention that.

THE COURT: We will postpone it until the next time.

(Time noted: 7.00 o'clock p.m.)

- - -

THE COURT: If there are any fact witnesses you have a right to ask that they be excluded.

MR. BRENNAN: I call Louis Torrellas.

L O U I S A. T O R R E L L A S, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRENNAN:

Q Will you please tell the Court where you are employed, please?

A I am employed by the New York City Police Department.

Q What is your position?

A I am a sergeant.

Q Where are you assigned?

A To the Equal Employment Opportunity Unit.

Q What is your position there?

A I am sergeant, supervisor.

Q Before that, where were you assigned?

A I was assigned to the Recruitment Section of the New York City Police Department under the umbrella of the Personnel Bureau.

Q How long have you been assigned to these two units?

A I was initially assigned to the Recruitment Section in March 31, 1972 and the Recruitment Section has had a change of names in the last four years and it was merged with the Equal Employment Opportunity Unit, I believe, in April 1974.

Q What are the functions of the Recruitment Section which is now incorporated into the EEO Unit?

A They are three-fold. First, and primarily, the function is to establish and maintain liaison with the Police Department and the minority community.

A second function is to, through an affirmative action program, to go out into the communities and school and colleges and give career fairs.

A third function is to answer letters of inquiry from interested people throughout the world actually.

Another function is that which was muffled in 1972, was a retrieval function that actually bloomed in 1973.

Q You mentioned career paths. What do you mean by that and what does that entail, to present career paths?

A If I used paths I used the wrong word. It is career fairs, presentations.

What we do is go out into the community and schools and advise people who attend fairs about the feasibility of joining the Police Department.

1 ards

2 Q Are these restricted to certain areas?

3 A Our main goal was toward minority recruitment

4 and we did go into the minority areas; although we do

5 handle requests from everybody.

6 Q These career presentations have been going on

7 since how early do you remember?

8 A I remember since March 1972.

9 Q Did you take part in the retrieval program with

10 the Recruitment Section?

11 A Yes, I did. From 1972, actually through 1975,

12 one part or another.

13 Q What was the purpose of the retrieval program?

14 A It was a program where we --

15 THE COURT: Didn't we have testimony on that?

16 I don't need that twice.

17 MR. BRENNAN: We didn't have testimony on it.

18 THE COURT: We had testimony on the purpose of

19 the retrieval program and the purpose of the retrieval

20 program was, as I understand it, was the fact that there

21 were a number of minorities who passed the examination and

22 to help them lest they fall by the wayside before they got

23 into uniform.

24 MR. BRENNAN: We didn't have any testimony as

25 to the results of the retrieval program.

THE COURT: You can ask that.

MR. BRENNAN: And how it was accomplished.

THE COURT: You can ask that, but I don't want to go ito the testimony on it, not twice.

MS. STEINBOCK: I believe, in fact, there was testimony as to the result of the program as well.

THE COURT: I don't remember that. You may be right. If you want to ask him the results I will allow that.

Q Can you estimate, Sergeant, how many minority persons were reached through the retrieval program?

THE COURT: No, I won't allow that. I thought you meant by asking him what the results were, what was the success of the program, how many people can he say that they actually helped get into uniform.

Q Can you estimate, Sergeant, how many minority group members who were on an eligible list were retrieved for the program?

A Were retrieved? I would say approximately 500.

THE COURT: How many?

THE WITNESS: 500. These were retrieved.

THE COURT: 500 were retrieved?

THE WITNESS: Yes.

B2 Q Out of how many contacted?

A My records are sort of incomplete. I have

1 ards

2 records showing approximately 850. I would estimate that

3 we attempted to contact about 12 to 1500.

4 THE COURT: What is the basis of that figure?

5 That is very high.

6 THE WITNESS: I don't mean to mislead. I said

7 retrieved, meaning that we contacted these people, they

8 came down and visited with us. That does not mean to say

9 that all those 500 were appointed.

10 THE COURT: Then it is meaningless as far as

11 I am concerned.

12 Q Of those, how many were actually entered into

13 the Police Department?

14 A Approximately 250.

15 Q Were any of the named plaintiffs among that

16 group?

17 A Yes.

18 Q Can you identify them?

19 A Oswaldo Perez.

20 Q How did you help Oswaldo Perez back into the

21 Police Department?

22 A He visited me initially, my office, in March

23 and -- I would have to look at my records to refresh my

24 recollection.

25 MS. STEINBOCK: I don't think it is relevant

1 ards

2 at all to this lawsuit. As I understand it, these witnesses

3 are showing past good faith.

4 THE COURT: I am not sure it is either. I

5 think that figure is very high, even 250 is very high.

6 What you are really trying to say to me is that

7 the retrieval program -- I thought the program was aimed

8 at getting those people who would, under ordinary circum-

9 stances, not complete their -- not complete all that was

10 necessary to get into the Police Department.

11 But, with a figure of 250 without some more

12 evidence on it, I can't be sure that these were people who

13 wouldn't have, on their own, completed the program anyway.

14 MR. BRENNAN: That is what the witness was

15 testifying to, your Honor.

16 THE COURT: On what basis are you testifying

17 about that? How can you say that?

18 THE WITNESS: I have through my own individual

19 efforts, I have appointed at least 15 minority members into

20 the Police Department. Oswaldo Perez was one of them.

21 THE COURT 15 seems to be a number that I would

22 find more recognizable than 250.

23 THE WITNESS: I am supervisor in charge of a

24 special unit and retrieval efforts at one time had at least

25 10 other people involved in it.

As I stated earlier, it went on from 1972 through 1975. We had identified every minority candidate on all the existing lists and found out what stage they were in the process of.

THE COURT: But you are certainly not saying, are you, that all these people that eventually, 250 eventually appointed by the Police Department would not have completed their processing but for your program?

THE WITNESS: Your Honor, I beg to differ. I think in all earnestness, earnestness, without the help of myself and some of the members of our unit, most of these people would have been lost.

Oswaldo Perez is a perfect example, a very intense young man and a good friend of mine and I believe he would not have been appointed. In fact, I am certain.

THE COURT: On what basis?

THE WITNESS: He was appointed September 27, 1975. That was the next to last days of appointment. Excuse me, that was October 1975. He would not have been appointed and many of the people that we assisted just didn't know what the routine was to go through the process. For instance, many of the persons went down to the Department of Personnel to reopen their case. They would never have been instructed to go down to our unit to reopen their

1 ards

2 investigation and the character investigation form. So I

3 certainly doubt that without the assistance of our unit,

4 most of these people would not have been employed.

5 THE COURT: All right, let us proceed.

6 MR. BRENNAN: Your Honor, I was prevented from

7 laying any foundation for testimony but I think the figures

8 would bear out the conclusion that 250 is not an unreason-

9 able number.

10 THE COURT: I appreciate Sgt. Torrellas' state-

11 ment. Let us proceed.

12 Q Can you tell us how you did help Officer Perez

13 to get into the system?

14 THE COURT: I am not really interested in that.

15 The details of that -- I wanted to know what you are doing

16 and you have this program and Sgt. Torrellas says that

17 he feels, by virtue of its efforts, that 250 people were

18 appointed. That is enough for me. I don't want the details

19 of what was done.

20 MR. BRENNAN: In addition to Perez being one

21 of the named plaintiffs, he was also an excellent example

22 of how the program operated.

23 THE COURT: No, I don't want to hear that. The

24 fact that you have the program, the purpose of that was to

25 show a good faith effort on the part of you and the only

1 ards
2 purpose it would serve and certain facts that the program
3 indicate that. The fact that the program had saved or
4 brought 250 minority people into the Police Department who
5 otherwise not be in there, I don't believe that the details
6 of that --
7 MR. BRENNAN: I would make an offer of proof
8 without the efforts of Sgt. Torrellas, Oswaldo Perez would
9 not be appointed in this case.
10 THE COURT: All I said was that is part of the
11 good faith, that is all it is. Let us proceed.
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15 (Continued on next page.)
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2 MR. BRENNAN: I think the sergeant has testified
3 to the rest of the points I was going to bring out.
4 THE COURT: All right.
XXX 5 CROSS EXAMINATION
6 BY MS. STEINBOCK:
7 Q Sergeant Torrellas, out of the 250 police offi-
8 cers you testified you retrieved, do you know how many
9 are presently on lay-off?
10 MR. BRENNAN: I object to that. You just said
11 you didn't want any testimony on that.
12 THE COURT: I didn't say that. You wanted the
13 sergeant to tell me what he did and what his program was,
14 and so forth. That's what I am not interested in. That's
15 not a part of this case.
16 MR. BRENNAN: You said the testimony was being
17 accepted for the purpose of showing good faith.
18 THE COURT: Yes, and your good faith effort.
19 The plaintiff has certainly a right to find out who is
20 left.
21 THE WITNESS: Your question is retrieved or
22 hired?
23 THE COURT: Of the 250 people that you said you
24 retrieved, of those 250 how many are on lay-off?
25 THE WITNESS: I have not the slightest idea.

Q Let me ask you this: When were those 250 police officers appointed, approximately?

A Anywhere from January of 1973 through October 7, 1974.

Q Isn't it a fact then that all of those police officers are now on lay-off?

A No, it is not.

Q Why not?

A Because if you happen to have service time you are credited with 30 months' seniority; if you are a disabled veteran, you are credited with 60 months' seniority, thereby giving you seven, eight and possibly nine years of police service. If you had prior civil service time, that time accrued to your police service.

So you see, I have no way of knowing.

Q So that through the accumulation of this kind of credit some of those who were retrieved by you may have possibly withstood the lay-off, but isn't it a fact that the vast majority of all those people who are retrieved are now on lay-off?

MR. BRENNAN: I object to the form of the question.

THE COURT: That's argumentative.

Q Isn't it a fact that those police officers, the

vast majority of those appointed in 1973, are now on lay-off?

A That's true.

Q You have testified that these police officers who are retrieved began to be appointed in 1973; is that correct?

A That's true.

Q Does it follow, then, that most, if not all, of those police officers are now on lay-off?

MR. BRENNAN: I object. The witness has answered that question by saying he has not the slightest idea.

MS. STEINBOCK: I would ask defense counsel if we can be provided with the names of those 250 people who were said to be retrieved, and we can find out if they are, in fact, laid off now.

Q Do you have that information?

A I do not.

Q How do you know the number is 250?

A It is my estimate through my working in the retrieval effort.

I started in January of 1972 in the program. I was taken away from it in July of 1973, and it was given to someone else to take care of. That's the reason my records are incomplete.

I took charge of retrievals in late 1975, and since that I have been taking over that effort also.

Q Is it correct that you have no records of the individuals whom you have numbered among the 250?

A I have records. They are incomplete.

Q In what respect?

A In that I was taken away from the retrieval effort on two different occasions.

Q Are the records of each individual incomplete, or are the records that you stated that amount to 250 incomplete?

A The records of my unit where we were compiling this information are incomplete.

Q So that this number of 250 that you have testified to is not a result of records, or you do not testify to this as an exact number that you have for records that you have in the Police Department; is that correct?

A That's correct.

Q How did you arrive at this estimate or this figure?

A It is an "educated guess," for lack of better words.

Initially I went through my records and I found out that we had attempted to contact approximately 841

persons.

Q During what period was that?

A During the entire recruitment drive period, during the entire time of hiring and shortly thereafter.

Q You say you were in the recruitment program and then out and then in again?

A I have always been in the program but my duties have differed.

Q So you are testifying that 841 people were contacted from about when to when?

A My earliest records indicate that we have approximately 841 persons that we attempted to contact.

Q In what period?

A The period runs from -- probably prior to my joining the unit in 1972. The recruiment effort was somewhat muffled in 1972 because no hiring was going on, but prior to that the unit went out and identified all the minority candidates on all our existing lists and attempted to get them back into processing. Those records show a total of approximately 841 names.

Q Do you have those records which reflect the 841 contacts that were made?

A Yes.

MS. STEINBOCK: I would ask that they be provided.

Q How did you go from the 841 contacts to this number of 250 that you say were appointed as a result of the program?

A There is confusion here as far as an attempt to retrieve, retrieve and finally appoint.

My statement is that I believe -- and it is an educated guess -- that we appointed, through our efforts, approximately 250 people who would not have been appointed without our retrieval efforts. In order to appoint 250, we contacted, or attempted to contact, maybe 1500, of which we must have actually contacted 500, either through letter, through phone, or through personal contact.

Q I am asking you this: Are there any records that reflect that these 250 people were contacted or were appointed as a result of the retrieval program?

A As I stated before, my records are incomplete. I was in charge for a certain period. I was taken away from that specific duty. I don't know of any completed records regarding the retrieval effort.

Q Who was in charge of the retrieval program when you were taken off?

A Sergeant Sheffey.

Q Is it your understanding that between the records you have and the records that Sergeant Sheffey, or someone

else, in the Police Department would have, it would be possible to isolate these 250 people and show from the records that they were appointed as a result of the retrieval program and would not otherwise have been appointed to the police force?

A I do not think it is possible only because when Sergeant Sheffey took over the recruitment effort in 1973 and I was one of his co-supervisors, we were innundated with work. That effort was given to two police officers: Police officers Armand Dickenson and Cruz, I believe, under the supervision of Sergeant Sheffey.

B2 One of their particular duties was to identify all the minority members on our existing lists, especially 0013, which was a list that was hardly touched. There was an effort upon the investigation squad who does the character investigation leading to appointment, and it was the dictate of the then commanding officer, Deputy Inspector Charles Henry that if any minority candidate indicated a desire to withdraw from the proceeding or was uncooperative for one reason or another, before his case was closed out the recruitment squad was to be contacted and we would counsel that individual and pursuade him to continue in the processing, and in most cases we were very successful.

Q Do you have in your possession, or do you have

access to, any of the files out of that group of estimated 250 of those whom you or your staff personally retrieved for appointment?

THE COURT: Isn't this whole business a waste of time? Aren't you willing to concede that during that period of time the Police Department, because it did feel this need to have more minorities, did make an effort? Isn't that a matter of record?

I agree with you. I do not understand why we are getting into this. It is obvious that no matter how strongly Mr. Torrellas feels, he has no hard evidence to give us in terms of the 250. He could have picked out the figure of 350, as far as we know.

For my purposes and for purposes of the case, it seems to me that the real testimony is that during that period of time the Police Department made a sincere and good faith effort to improve its ratio of minority people.

As far as I am concerned, that's what I was attempting to indicate. That's all you can establish at this point. I don't understand what the purpose is of trying to say anything else. You are trying to tear it down, but I don't think you can.

MS. STEINBOCK: I would only ask that the defendants produce any evidence that they have of the 250

minorities that were appointed as a result of the retrieval program.

I have no further questions.

THE COURT: Thank you. You are excused.

(Witness excused.)

MR. BRENNAN: On that point, your Honor, it may be necessary to recall Sergeant Sheffey as a witness to help us reproduce those records, Sergent Sheffey being the president of the Guardians Association for the plaintiffs here.

THE COURT: I do not think you have established it, and I am not accepting that figure. It does not make any difference for my purposes, or for your purposes, or for the purposes of the plaintffs, as far as I can see, whether that is an accurate figure. That's a waste of time, I think. I am not accepting this figure of 250. I am accepting the fact that there was a good faith effort made. I am not accepting the figure.

If you really want to prove that that was the figure, you make the effort; otherwise, I am not insisting that you furnish the plaintiffs with any names. If you want to prove it, you are entitled to do that.

Let us proceed.

MS. CARROLL: I would like to call Solomon Weiner to the stand.

I may.

RECROSS EXAMINATION

BY MR. KIMERLING:

Q We're talking about the position of patrolman in the police department, Dr. Gross. Would the commissioner of police or his immediate subordinate, assistant commissioners be the appropriate person to consult?

A I don't know. Maybe they haven't seen a policeman in 20 years.

THE COURT: He's indicated he doesn't know that. Thank you very much, Dr. Gross.

(Witness excused)

THE COURT: All right, Miss Carroll, who is next?

MS. CARROLL: We would like to call at this time Captain Lawlor.

T H O M A S L A W L O R, called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CARROLL:

Q What is your present employment?

A I am employed by the New York City Police Department.

Q What is the rank?

A I'm a captain and I'm assigned to the police academy.

Q How long have you been employed by the New York City Police Department?

A Over 17 years.

Q Would you be good enough to outline for the Court the course of your assignments in the department, please?

A In the 17 years in the New York City Police Department, I have had a variety of assignments, investigative, managerial and patrol. After graduating from the police academy I was assigned to the 32nd precinct for about half a year. I went to the tactical patrol force for three years of which I wasin the Army for one year. I went on to investigative work in the youth patrol of the youth division for about a year and a half.

I went into investigative work in the intelligence division of the detective bureau where I was made a detective. I worked there for about a year and a half. On promotion I went to patrol in the

Greenpoint section of Brooklyn for about a year and a half. I returned as a suprevisor to the intelligence division to supervise investigations for about two years. I was promoted to lieutenant and I was assigned to investigate gambling and vice in Queens for about a year and a half.

At that time I was assigned to a staff position in the chief of control's office conducting management analysts of chief of the control office and management instruction.

For about a half a year I was assigned to the chief of detectives, I worked on the staff of chief of detectives, commanded the unit that inspected detective squads for administrative proficiency and investigative proficiency. That was about a year and a half in that assignment.

Then in October of 1973 I went to the police academy and after about two months in the police academy, I was made commanding officer of the student officer recruting section which is the recruiting section which is the recruit training program.

Currently, since there is no recruits, I have the title of managerial officer within the academy.

Q Can you please describe your educational

background for this Court?

A I have a baccalaureate degree from St. John's University in business administration. I hold a master's degree in professional studies in criminal justice. I also was recipient of a fellowship to the Brahm's Hill, National Police College at Brahm's Hill, England for four months last summer.

Q Can you describe your specific experience in the field of police recruit training?

A Okay. As I mentioned, I was assigned to the police academy in October of 1973. Shortly thereafter I was made commanding officer of the student officer training section and was responsible for training new police officers, recruit police officers assigned to the department. During the time in that assignment, I also attended a national symposium for law enforcement trainers and educators at the FBI Academy in Quantico. I visited the police academy of the Texas Department of Public Safety in Austin, Texas. More recently I have been in charge of all area level training for all uniformed personnel in the department.

When I was in charge of the recruit school, I was also responsible for all firearms training, for all members of the department. More recently, I was charged

with the responsibility and have complted the training for all members of the department in relation to Operation Sail and the 37th National Democratic Convention to be helf in our city next week.

Q During the course of your experience, how many recruits have you trained at the New York City Police Academy?

A I have trained in excess of 3500 recruits.

Q Would you be good enough to explain what the police academy is?

A The police academy is the primary training command of the New York City Police Department. It has the responsibility not only to train new members of the department, both civilian and uniform, but also to carry out advanced specialized managerial training for other members of the department, depending on their specific needs.

The police academy, like most police academies in the country, is the vehicle which the department sets up to carry out the primary training responsibilities.

Q Now, what is the course of events that occurs upon a police officer being appointed from the police officer examination list?

THE COURT: What was that question?

Q What is the course of events that occurs when a police officer is appointed from a police exam list?

A On appointment to the police department, they are assigned to the police academy for their basic entry level training. The training is approximately eight months; six months in the police academy during which time they are trained in a variety of academic and technical skills, firearms, driver training, law, police science, social science, physical training.

During that time, they are given in the academic areas, they are given four quarterly examinations and a comprehensive examination. They must attain a passing mark of 70 in the academics.

In the physical training, they must also pass a final exam and attain a mark of 70 per cent. In the firearms, they also have to pass independently a proficiency examination in firearms and they have to attain a 75 per cent in that regard.

If they successfully complete the in-house training, then they go on still assigned to the police academy, they go on to field commands for a nine-week field environment program where they have the opportunity to relate the theories and the academic matter taught in the

classroom to practical situations in the street under the guise of a field training officer.

MR. KIMERLING: Can we have a time frame on this? I believe this is the program just instituted with the last group of people.

A The intern program is relatively new. It was instituted in 1974.

MR. KIMERLING: Could we have a time frame on this testimony as such? My understanding is --

THE COURT: He's testifying, I gather, about his training -- oh, I see what you mean. This is the appointment and how they are assigned and what is done. Is this new or just the period that's covered by the time that you have been in charge?

THE WITNESS: Well, the six-month training program, since I was in the academy we completely revised and rewrote the whole training manual and that took about six months to teach. Then that was implemented towards the end of '73, beginning of '74. In 1974 we added the nine weeks field intern program and made it part of the recruit training.

MR. KIMERLING: I have some questions about the relevance of his testimony, your Honor. I think we are talking about examinations from '67 to '70 and I don't

understand what the relevance is of the training programs that were instituted in '73, '74.

MS. CARROLL: Your Honor, with respect to those examinations because of the previous testimony we had there were no hirings from the list for the period of '70 to '73. This is the relevant curriculum that was used with respect to all the recruits who were with the subject of the plaintiffs' class.

Additionally, we intend to introduce both curriculums, the newer one as well as the revised which had been provided to the manufacturers. So the Court has the full range of the curriculum.

THE COURT: Is Captain Lawlor testifying about a curriculum that was in operation from 1968?

THE WITNESS: No, sir.

MS. CARROLL: Your Honor, I think if he would be allowed to testify --

THE COURT: I'm not going to cut him off, Miss Carroll. All I'm trying to find out is what it covers. I have no -- I'm not going to sustain the objection. I just want to know what it covers. He's indicated he's talking about a period, I gather, since he was there.

MS. CARROLL: That is right.

THE COURT: That's been the last couple of years?

MS. CARROLL: Since '73.

MR. KIMERLING: If I might speak on my objection for a second. I think one of the bases of the defendant's case here is to show the correlation between the study program and the examinations. I think it is appropriate to note that these study programs that we are going to talk abouw were not in existence when the examinations were made. Therefore, they were not the basis of the examinations themselves.

MS. CARROLL: I think that is a proper subject for cross-examination. But I think at this point the witness hasn't been able to indicate whether the changes were made or not.

THE COURT: All right. I understand. But I think what we ought to have, I don't feel that it is valid to have any, for the new program not to be in, but what I would like to know what was going on from '68 not just from '73.

MS. CARROLL: There wasn't any recruit training for the years between 1970 and '73. There wasn't any hiring. None of these --

THE COURT: You mean the academy was closed.

MS. CARROLL: I don't think it is closed, necessarily, but they didn't have recruits then like they don't have recruits now.

THE COURT: What happened between '68 and the time you were talking about?

THE WITNESS: I wasn't assigned, you know, to the police academy and I'm not really that familiar with it. Except for the fact I do know under Mayor Lindsay there was a three-year hiring freeze where they hired no one, just as we have now. Even though the academy would be doing training, they wouldn't be doing recruit training because there were no new recruits.

THE COURT: I see. You mean you --

THE WITNESS: You would be training sergeants and managers and detectives, the in-service training.

T6B

MR. KIMERLING: Your Honor, I would like the record to reflect the freeze began in 1971. These examinations would span the period between 1967 and 1970.

MS. CARROLL: Counsel is mistaken. The freeze commenced in 1970. I think we have had several witnesses from the department on that. It was almost a three-year freeze. I would like to have marked as Defendants' Exhibits II and JJ for identification.

THE COURT: Now, I think I understand. Ms. Carroll's position, I gather, Mr. Kimerling, that there was the freeze and the people who passed the examination, at least the last examination, we have a 1970 exam.

MS. CARROLL: Yes, we do.

THE COURT: At least the people who passed that examination were protected by this program because they didn't come in until 1973 and they were under Captain Lawlor training. But the people in 1968, apparently, should have passed through by that time.

Q Maybe you can answer that.

A I'm of the impression myself that we had students from many, many lists. There were a lot of lists in existence and we had students, and I believe, we even had them, a few left from '68 and some others from '69.

Q I show you a copy of Defendants' Exhibit II and

JJ and ask you if you can identify these please?

A Yes, Exhibit II is a copy of the curriculum that was in existence in 1973 in the Police Academy. Exhibit JJ is the revised curriculum that was put in somewhere around the very beginning, January, either December of '73 or January of '74 in the Police Academy. It is currently the training manual.

THE COURT: Ladies and gentlemen, I think that you are going to ease my task in terms of exhibits, either in your memorandum or whatnot that you will -- or when these things are put in evidence -- indicate what you believ are going to be the relevant parts of it. I hope you don't want me to go through every page of that pile of documents that you have. I have enough already. If you can indicate in your memorandum what you think I ought to look at, I think it would help me very much.

MS. CARROLL: Yes, I will do that, your Honor.

THE COURT: Obviously, you will do the same?

MS. STEINBOCK: Yes.

MS. CARROLL: I would ask that Defendants' Exhibits II and JJ be received into evidence.

MR. KIMERLING: Your Honor, as was indicated, it is our position that it is not. But, if it is going to be presented as the academy curriculum, I think we

should see the curriculum that was in existence in 1967 and 1970 before these things were prepared.

THE COURT: All right.

MS. CARROLL: We will produce them.

(Defendants' Exhibit II and JJ received in evidence.)

xx

Q What is the curriculum at the academy?

A The curriculum consists of three academic subjects, law, police science, which deal with department rules and regulations, department policy, department procedures and social science. In addition, firearms training, driver training, physical education and physical skills needed by the police officers are also taught.

Q How is this curriculum developed?

A Police Commissioner Cauley directed the commanding officer of the Police Academy back in September of 1973 to establish a curriculum task force which was made up of people both within the Police Department and people in and out of the Police Department. Lawyers, Youth Division employees, Assistant District Attorney involved, a former dean of Sienna College, involved with social science, a task force of approximately 20 people that would pull together and their job was to determine the training needs of new police officers. They went out,

conferred with field personnel. They tried to look at the performance standards of the police job, of the police officer's job and then they had the task and carried through the job formulating and writing a totally new curriculum. They also, may I say, consulted many of the published reports that recommended nationally and locally recommended improvements and upgrading of training. The President's Crime Commission was one. There was a police training and performance study done for the New York City Police Department through L.E.A.A. and that was another of the documents that was consulted. They consulted any of the more publicized and nationally recognized documents in that regard.

MS CARROLL: Your Honor, on this point, I would ask your guidance as to how we should proceed at this point. I assume that you don't want to read this whole thing. It is called the Police Training and Performance Study, an LEAA study done of training in the department in 1969. Should I just cite you to it?

THE COURT: Well, I --

MS. CARROLL: I didn't give the plaintiffs a copy of it because, quite frankly, I didn't want to photostat it.

THE COURT: If you are going to cite me to it,

I will have to make some reference to it. I'll just have to ask you to do what you did in the other instance.

MS. CARROLL: Perhaps we can have a submission following this, and I will identify the relevant parts of the plaintiffs' copy.

THE COURT: All I'm required to do is to read-- if I have to read all of that, obviously I will do it. But, if I don't, if you can save me a few pages, then please do that. That's all I'm asking about that.

MR. KIMERLING: Your Honor, I have no objection to having submitted parts of that book so long as the plaintiff provide us with a full copy of the book.

THE COURT: Of course. I think that's understood. You may find some portions in there that you want.

Q Now, you described the three curriculum areas, the academic curriculum areas at the Police Academy as being law, police science and social science. Now, can you tell us the content area of law in general terms that this course of study involves?

A It begins with an introduction to law in relation to the Constitution, police officers are shown how they themselves, their actions, their legal authority is governed by the Constitution, the Bill of Rights and particularly the First, Fourth and Fifth Amendments are

stressed. It goes on to get into the New York State laws, of course, and where it differs from what was previously done in the Police Academy, the penal law is no longer taught by rote memorization. The concepts are the main thing we try to teach the police officers. So that they can improve their reasoning ability and their logic and help them how to learn to solve the problems themselves on the street. We give them a lot of case studies. In the testing, we give them situational type questions rather than give them a passage out of the book and ask them what degree it is. We rather give them a fact pattern and help them analyze and arrive at the proper conclusions

b2 themselves.

Q With respect to police science, what is, in general, the content of that area of study for a police trainee?

A The police science would introduce the police officers to the organization they are going to work in. The various functions of the Police Department, the procedures, the forms that they have to fill out in aided cases, arrest procedures, taking accident reports, taking complaints of crimes. They are taught to learn how to take the proper information and all of the information for these reports and then translate them into writing so that the

information can be transmitted through the department and dealt with by the department. We also then go on to teach them some basic preliminary investigation techniques, some investigation techniques that we deal with, robbery, homicide and crimes, burglaries, crimes that they would be dealing with on a preliminary basis before the detectives arrive. We teach them traffic control, things of this nature.

Q What skill is involved in this area of police science that you are trying to develop in the police trainee

A I guess the biggest skill in this area would be the skill to be able to write and communicate the information from the reports properly to the department in a clear, efficient manner so that once the paper leaves them, the department can deal with it.

Q With respect to the area of police science, what is the source of the rules and regulations of the department?

A I don't know what you mean by the source.

Q Where are they found, the rules and regulations?

A In the Patrol Guide of the New York City Police Department.

Q Is that used during the course of training policemen, the Patrol Guide or manual as reference?

A We have excerpted the portions of the Patrol Guide that we need for the entry level training and we have put it in our student guide which is the document you just introduced into evidence.

Q Included in the curriculum that was introduced?

A Yes.

MS. CARROLL: I think we won't be putting this whole thing in. I'm sure everyone is happy about that.

Q With respect to the area of social science, which you described as a curriculum area, at the academy, could you describe the content of that particular area with respect to the training of a police trainee?

A The social science curriculum deals with an introduction and the teaching of police officers the role of the police officer. This is truthfully in direct response to the President's Crime Commission. They did call for this and we spent a lot of time introducing the new police officer, who really is a civilian come to the role of the police office as defined by the agency. We go on and we teach them about personalities, inadequate and adequate personalities, insofar as police work is really people work and we have to deal with all kinds of people. We try to give them some of the basic insights into different types of personality theories. We go on

then and teach them some transactional analysis, which is nothing more than a tool which can be used in communicating with people and by the use of words, actually controlling responsive people when you are communicating with them. Especially if they tend to be a little bit verbally aggressive with you. Sometimes you can control them by the use of words. We use transactional analysis. We teach them about the socialization process. We feel they should understand the basics of socialization, how people grow up and the different hereditary impacts and why two people born on the same day in different neighborhoods will grow up quite differently. We turn that around and show them how they can be socialized by the organization they have now joined in the years ahead. We talk about peer pressure and things of this nature. We teach them about integrity and we show them all of the corruption hazards they can expect to find in police work. We teach them about inter-communications and crisis intervention. We teach them about the word, the spoken word as a police tool. We try to give them a real appreciation of the fact of the words they choose in dealing with people can very well have a profound impact on people, number 1, and determine the flow of events. Certainly poor words will lead to poor intereaction. We stress that. We don't want to show in

crisis situations and crisis on the low side of the scale could be a family dispute or on the extreme side, could be a suicide or a hostage. We show them in a crisis situation, we show them the use of words, how that is magnified. In an extreme case, a poorly used word could be used in saving the life of the suicidal person or something like that. It also culminates with what we call the last chapter, New York City, its history and its people. In order to be an effective representative the city government, the police officer has to have an appreciation of the city that they work for and its relationship to the rest of the government. So we give them some background going all the way back to 1664 and bringing them up to date. We try to give them an appreciation of the funding problems, dependent sometimes upon the city and state. We feel they should know this kind of information walking around the streets. First of all, when they don't get the raise they think they are entitled to, it may affect morale. It may not be the city's fault. We go into this and talk about crime and having an appreciation of crime and not so much crime, but the fear of crime. The police officers should understand and realize that the city is a relatively safe place. It ranks about 13th or 17th as far as the national cities go and it is not crime ridden. However,

the fear of crime is something that is impacting more on our society. They, being our city representatives on the street, should know that the city is a lot safer than a lot of people think and should carry this image and thought out into the world. We go into the various cultures that make up our city and try to give them an appreciation of the different cultures and contributions of people within the city, and we try to do away with a lot of myths that are prevalent among our citizens regarding different cultures.

Q These are curriculum areas that you described, are they paralleled to a prior curriculum?

A Some of them are paralleled and some aren't. The social science is not paralleled at all. That is totally new. In the previous curriculum they may have touched on community relations or human relations, some broad type of title but I'd say 90 percent of that, they may have dealt with prejudice a bit but 90 percent of the social science curriculum, I would say, is new and has not been dealt with.

THE COURT: What you testified, I gather, is that conceptualization is part of that teaching tool?

THE WITNESS: As approached, yes. I'm sure that the original curriculum or previous curriculums dealt with

the Constitution but not as in depth as we do. We spend a lot more time teaching about the freedom of speech, the First and Fourth Amendments, search and seizure and relating that. We give them a lot of case studies.

THE COURT: I gather what you mean in that area, you will give them a factual situation that they will recognize where various things, I suppose, which are important and they will be exposed to and how to react to it?

THE WITNESS: How those amendments relate to the police role, yes, sir.

THE COURT: That's --

THE WITNESS: I would say that the police science has basically stayed the same. We have made some changes but it is the same material.

T7A Q From your experience and from the background of the police recruitment training you have testified to previously, can you indicate what the general trend is in the United States with respect to educational requirements for police officers?

A The trend is for more and more education. More commissions and surveys and studies call for more educated police. I think our society is just starting to realize the broad impact. The studies now indicate the police roles are 10, 15 or at the most 20 percent enforcement and somewhere between 80 and 90 percent service oriented. With this new knowledge, going back I think to the President's Crime Commission in 1967, it first came out, and they called for one year of college for all police officers just entering into police service. Other studies have called for more. Many, many Police Departments across the country require an associate degree and some of them require a baccalaureate degree just for entry. Our neighbors to the east, Nassau County, they require an associate degree to become a police officer. The thrust is for more and more education for police personnel.

THE COURT: Has that trend been sufficient to know whether it makes a difference in terms of promotion?

THE WITNESS: I don't think it has been measured

or can be measured. If we are asking our police officers to go out and have a broad mind and to understand that their job is not just shoot them up and lock them up, you know, and understand just giving directions or giving people advice is very much a part of his job, then I think his outlook has to be broadened and I think formal education is the way to go. It's very difficult for the Police Departments to take that much time because it takes so much more. We are talking attitude really and outlook, and it takes a long time to change people's attitudes and it's difficult to do it.

THE COURT: I don't disagree with that. I was wondering whether there is some conflict on that too, what the studies indicate.

THE WITNESS: I don't think the studies are able yet to show conflict because I think most Police Departments haven't come around even to starting to get that high a percentage of college graduates into their ranks yet except for small departments like Nassau County.

Q How does curriculum at the Police Academy attempt to meet the goals you previously state were enunciated by the studies, such as the Kerner study, with respect to the standards?

A We have introduced a college-level curriculum.

The material in there is college level. I think you will find the sociology, psychology and constitutional law on the curriculum of most colleges, and I think through this introduction of this curriculum we have been able to raise our own standards. This particular curriculum was reviewed by the New York State Department of Education in January of 1974. They had a board set up to review the curriculum. They looked at the qualifications of staff, our testing procedures and the whole operation of the recruitment school and the State Department of Education came out with the recommendation to every college in the state and later it went to every college in the country anybody who successfully completes all phases of New York Police Academy recruit training be awarded 35 college credits. Actually almost 37, because there are three different courses, any one student can only attain 35 of these college credits. This has been our attempt to upgrade ourselves towards college level personnel.

MS. CARROLL: I would like to have marked for identification Defendants' Exhibit KK and KK-1.

(Defendants' Exhibits KK and KK-1 marked for identification.)

xx

THE COURT: That is about a year?

THE WITNESS: A little over a year, yes. We hope

that this will supply all of the new officers with the motivation, and drive to go out and continue on their own, to get the other three years.

Q I show you a copy, Captain Lawler, of Defendants' Exhibit KK and KK-1 and ask you if you would identify them.

A Exhibit KK is that portion of the official guide put out by the New York State Department of Education, Office of Non-collegiate Sponsored Instruction which is the office that carried out the evaluation of our curriculum and made the recommendations to every college in the state and later every college in the country.

KK-1 is a list of persons both professional and academic who comprise the evaluation board that evaluated the curriculum.

MS. CARROLL: I would ask these be received into evidence as Defendants' Exhibits.

MR. KIMERLING: I don't understand the relationship of these two.

Q Captain Lawlor, can you explain the relationship between KK and KK-1?

THE COURT: I thought you said KK was the evaluation and KK-1 were the people who evaluated it.

THE WITNESS: That's what it was, your Honor.

MR. KIMERLING: I find KK to be just an outline of courses.

THE WITNESS: Just names of people.

THE COURT: You can get to that on cross-examination. I thought it was the State Department evaluation of the curriculum and the other document the people who did the evaluating, their credentials.

Q Is that correct?

A Yes, it is.

(Defendants' Exhibits KK and KK-1 received in

xx evidence.)

Q Captain Lawlor, can you give us an estimate of the level of reading comprehension of this course of study at the Police Academy?

A It is college level, I think it has been evaluated as being college level. I can just make an estimation it would probably be about, I don't know, 9th grade.

Q In training recruits who come to the Police Academy, can you give us an opinion as to the skill areas that a candidate must possess to complete that course

b2 of study?

A Entering the academy I feel they should have

a basic level of intelligence of knowledge. They should be able to communicate, both in writing and verbally. They certainly have to be able to read. They should be able to make judgments. Perhaps they should be able to demonstrate the ability to interpret and read graphs or charts, and be able to do some basic math. Basic level of intelligence is what I feel you need.

Q What do you do with those skills at the Police Academy, given they exist in a recruit to be trained?

A Well, being that a high school diploma is required to come into the Police Academy, we assume the students coming in already have those basic skills and what we do, we gear our training to go beyond these basic skills and to take those skills and give them a police focus and to try to broaden and sharpen the skills that are already there.

Q With respect to the period of one year that a police trainee commences, you mentioned there was a six-month period at the Police Academy, is that correct?

A Yes, that's correct, and then another nine weeks in the field, still assigned to the Police Academy but working in the field command.

Q What is the concluding --

A Then if they successfully complete the field

1 intern program, then they would be assigned from the Police
2 Academy, transferred to a field command and then they
3 finish up the remainder of their probationary year while
4 assigned to the field command.
xx 5 (Defendants' Exhibit LL marked for identification.)
6 Q Captain Lawlor, can you identify this document,
7 please?
8 A Yes. This is a document prepared by the commanding
9 officer of the Police Academy that deals with the attrition
10 rate of student officers who were assigned to the Police
11 Academy during 1973 and 1974.
12 MS. CARROLL: I would ask that this document
13 be put into evidence as Defendants' Exhibit LL.
14 MR. KIMERLING: May I have a voir dire of the
15 witness?
16 THE COURT: Yes.
17 BY MR. KIMERLING:
18 Q Captain Lawlor, did you prepare this exhibit?
19 A It was prepared under my direction.
20 Q What were your directions?
21 A To prepare a report relating to the number of
22 police officers appointed and those who completed and
23 did not complete the training and do it by breaking it
24 down as to Hispanics, black, white and other police officers.
25

Q The period which is covered apparently by the report is '73 to '74.

A Yes.

Q Was it your direction to cover just those years?

A Yes.

MR. KIMERLING: I question the relevance of this, your Honor, without seeing the attrition rates for previous periods. Certainly some of the men on those examinations were in the academy in '73 and '74 but a great number of them completed their academy courses prior to this.

THE COURT: Captain Lawlor is showing, as far as I know, the period of time that covers the time he was there and the testimony which has not been controverted is that some of the people in the academy at the time were those who had been successful in the '68 examination. That covers a group of the people apparently that we are talking about here.

xx (Defendants' Exhibit LL received in evidence.)

BY MS. CARROLL:

Q With respect to this study that was conducted during the years 1973 and '74 to determine the attrition rate at the academy, can you indicate the number of persons entering the academy during that period and the attrition

rates for whites, blacks and Hispanics, please?

THE COURT: You have already got that into evidence He doesn't have to read the document.

Q For this period, Captain Lawlor, the attrition rates for whites, blacks and Hispanics, was that approximately the same at the Police Academy?

A It was relatively similar, four, five percent difference.

Q Do you know, Captain Lawlor, as a fact whether or not all police officers--

THE COURT: Excuse me. I want to be sure I understand this. Would you give Captain Lawlor this? Maybe we can share this copy. It says "Resigned and terminated."

THE WITNESS: These are the ones that were appointed. It's difficult sometimes to distinguish who resigned and who terminated because sometimes if a police officer knows he failed all his examinations and he anticipates, he will resign. So, we just put them together.

THE COURT: The first is the actual figure?

THE WITNESS: Right.

THE COURT: And the figure --

THE WITNESS: Percentage of the total, the percentage of those who successfully completed and who

stayed with us.

THE COURT: Thank you. I understand.

We were talking about Exhibit LL.

MS. CARROLL: Your Honor, with respect to Mr. Kimerling's concern whether the plaintiffs' class is in this group, I can ask some questions. I'm not sure that Captain Lawlor knows, but it might save some time.

BY MS. CARROLL:

Q Do you know, Captain Lawlor, approximately the number of police officers who were laid off in June of '75 with the layoffs? Would you know that?

A I was away at the time but I believe it was somewhere over 3,000 and then they rehired some. It was a little less than 3,000.

Q With respect to those 3,000, they were laid off, were they not, in direct order of seniority, that is, the last appointed would have been the first laid off, isn't that right?

A That's correct.

Q With respect to that, does it follow that these must have been persons who most recently completed the course of study at the Police Academy?

A Yes, it would.

Q Would it be your opinion, then, that of those

persons laid off, they are predominantly represented by what you have as the 4,700 in Exhibit LL?

A Would you repeat that?

Q With respect to the approximately 3,000 persons that you said were laid off in the layoffs of '75, is it logical to assume then that they last completed the course of study at the Police Academy?

A Yes, that's right.

Q When was the last class in the Police Academy completed?

A Just in June. I believe some of the officers were laid off were actually in the last couple of weeks of the intern program at the time they were laid off. In effect, they were still in the Police Academy.

Q So then with respect to those officers who had been laid off and who were not probationers, they would have been included in this percentage and with respect to those who were laid off but were not completed, they are not identified by this, or are they?

b3 A That had not been completed, yes.

Q In other words, those who didn't complete the course of study because of the layoffs are not included in this figure?

A Yes, they would be because they completed the

academy, the academic end six or seven out of the nine weeks of the internal program. I'm pretty certain they're included in that.

Q Then when you say they had completed their probation period, you mean the whole year but the course of study at the academy would have been completed?

A Right.

MS. CARROLL: I hope that cleared that up.

THE COURT: I'm not sure. When was the last class that you had at the Police Academy?

THE WITNESS: They were still assigned to the Police Academy in June. They had completed the academy training and were in the internal program, working in field commands.

THE COURT: June of this year?

THE WITNESS: June of last year, 1975.

Q When did they actually complete the course at the Police Academy, not the internal program.

A They probably completed that in May, in May of '75.

MS. CARROLL: I will get an actual breakdown.

THE COURT: I think so.

MS. CARROLL: With respect to the 4,700 introduced here, these are the percentages, your Honor.

THE COURT: While you are looking, and this has nothing to do with this case, what is the relationship with John Jay?

THE WITNESS: We encourage our police officers to go. As a matter of fact, John Jay recognizes all of the 35 credits that were awarded or recommended to the colleges by the state. They will grant our police officers 32 of the 35. It's a recommendation. Each school makes their own. They have a rule they can never give more than four physical credits to anybody. John Jay had previously always had the bulk. They have lost the bulk of police officers to New York Institute. That's my opinion. That's because they got into training in station houses and all which John Jay also does now. Prior to my coming to the Police Academy in connection with the first curriculum entered into evidence there, police recruits used to go one day, 20 percent of their time, one day a week to John Jay and take, I believe, six credits there as part of their recruit training. The commanding officer of the Police Academy under which I served put an end to that and we do the total training.

Q Captain Lawlor, have you interviewed police trainees who failed the course of study at the Police Academy?

A I interview each and all of them.

Q In each and every instance?

A Yes, and in each and every instance I made written recommendations to the Police Commissioner on each of these individuals.

Q When a new trainee comes into the Academy, is he given any tests that you can use to evaluate his progress.

A Yes. During the first week before he actually starts the academic training, during orientation, he is given psychological tests by the medical unit. We administer an IQ test and a reading test to each recruit.

Q In your interview of a police officer or police trainee, more accurately, who is failing out at the police academy, do you review these materials? In other words, the file you just referred to?

A Yes, before I write my recommendations to the police commissioner I have to review each officer's individual folder, his file, his history with the department.

Q From your experience in interviewing candidates, have you drawn any conclusion with respect to any factor that from your experience has been correlated with failing out of the academy?

A The one factor that seemed most obvious to me was, there seems to be a correlation between reading ability and success at the police academy. Students of lower reading abilities seemed to have the most difficult and seemed to leave at greater numbers.

Q Do you provide remedial courses at the academy?

A We provide a tutoring program for any police officer who wants to come on his own time two hours a day with regular instructors, but what we do is, we teach them or we go over and we tutor them in what is being taught in the classroom.

In other words, we use the same curriculum.

We just go over it and try to reinforce it and help them. We don't teach remedial reading, for example, other than police academy courses.

Q With respect to this curriculum that is used at the police academy, has it received any acceptance or has it been published anywhere?

A Just as I mentioned, from the state department of education, the recommendation to each of the colleges, that they award 35 credits to the individual and almost every college in the metropolitan area has awarded credits to the students who have applied to them.

Q Are you investigating anything with respect to salability of this curriculum?

A Yes, I am. Right now I am dealing with Harper & Row. They have copies of the curriculum. They have sent it out to various experts and consultants in the academic world. The social science curriculum has been sent out and three weeks ago reports were coming back. The person I am dealing with has been on vacation but the first half of the law curriculum has been sent out -- these rae to colleges, by the way -- and we also have plans that they are going to send out, probably send out the second part of the law which only has New York State application probably within the state,

and our physical school curriculum, they anticipate sending that out to see if there is a market for that to various police departments across the country and I have yet to discuss the possibility of marketing our firearms instructions as well.

Q From your experience in training recruits and working with them in mastering the curriculum at the police academy, if an examination for police officer tested for basic skill in reading or math or vocabulary or reasoning ability, from your experience what conclusion would you draw with respect to your course of training at the police academy in tests of those areas?

A I would find to test in these areas, people having these skills would be able to come in and better handle the curriculum at the police academy.

THE COURT: Captain Lawlor has already told us that. He has indicated that he thinks that is a requisite for success at the academy and I think he has also indicated that in view of the renewed emphasis that has been put on academic training it is a requisite for success to at least be a police officer in the future.

MS. CARROLL: I have no further questions of this witness.

THE COURT: I am reading you correctly, am I

not?

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MR. KIMERLING:

Q Captain Lawlor, you testified thatin the courses of study one of the methods of teaching is to present somebody with a job situation and ask him how he or she would respond; is that correct?

A That is correct.

Q I will ask you to look at Defendants' Exhibit P in evidence which is a patrolman examination given in 1970, and if we look at question one, it says:

"An officer is called to a liquor store where the owner has just been robbed and beaten. The store owner is bleeding badly and doesn't seem to know where he is but he says he does not want to go to a hospital. Of the following, the first thing the officer should do is to assist" -- is this the type of thing you would train a man to respond to?

A Actually that's very basic, you know, a very basic kind of thing. We try to go into much more depth and the judgments we are trying to have the police officer make would be more sophisticated judgments. We are concerned with, you know, the use of deadly

physical force and things of that nature, stopping people, searching them, depriving them of their rights, the more -- I guess you might ssy the more serious or complicated and serious judgments that police officers have to make.

MS. CARROLL: Are you going to continue with that exam?

MR. KIMERLING: Yes.

MS. CARROLL: Maybe the Judge should have a copy.

(Handed to the Court)

A (Continuing) A question like the one you just read to me just showed that people have the ability to use more or less common sense and to reason out questions without having any particular expertise. What we are looking to do is to take the material that we taught and help them formulate judgments based on that to apply it to the police situation.

Q Is one of those situations a situation in which somebody is injured and what you should do in that situation ?

A I can't recall specifically. We certainly do cover aided cases.

Q You cover situations where people are drunk?

A Yes.

Q Let me ask you to look at question 7 on this examination. Is this the type of situation you would train a person to respond to:

"While on patrol alone an officer arrests a drunk and is going to bring him to the police station. The drunk is a much bigger man" --

THE COURT: Where is that?

MR. KIMERLING: I'm sorry, that's 0013, your Honor.

Q -- "The drunk is a much bigger man and says he won't go without a fight. When the man is ordered to move he pulls out a new bottle and starts drinking again. Of the following the best action of the officer to take first is" --

Is that situation taught at the academy?

A Actually it has been changed. Public intoxication is not a crime and we wouldn't teach him to arrest him in that situation.

Q I am asking you whether you teach a police officer the way to respond to a situation with public intoxication and a man resisting arrest.

A Yes, we teach resisting arrest and we teach more than just the ramifications of arresting that

man. We teach the ramifications of the society there and the whole neighborhood, you know, to keep it low key, and to handle it as professionally and efficiently as quickly as possible.

Q Do you handle family dispute situations?

A Yes.

Q And you give them situations in which there are disputes and ask them what they would do?

A Yes. In regard to family disputes we would get into the areas, as I mentioned in the social science curriculum, try to really increase the officer's knowledge and make him think through the social ramifications, the choice of words, not to use compulsive phrases, not to blow thething out of propostion, to respect the fact you're in someone's home, to go again beyond the just normal enforcement of approach that police officers for years have taken and to appreciate the total ramifications.

Q You try to give them some guidelines for making judgments of these types?

A Yes.

THE COURT: Are these, Captain Lawlor, chiefly instructional in terms of pen and pencil methods?

THE WITNESS: No.

THE COURT: Or do you actually act out situations?

THE WITNESS: First of all every student the day he comes to us gets a copy of the total curriculum. He is instructed, he knows, say, next week what he is going to be taught. First he is required to pre-read the information. So he is somewhat familiarwith it. Some of that he has never read in his life. The classes are conducted in a discussion rather than a lecture format because they have some knowledge and we highlight on the main points.

After the class they're also instructed to go home and read it again. So within a week we should get three readings or three exposures to the information .

We try to use skits and -- we have a courtroom when it comes to court testimony. I don't want to give you the impression we operate this way only because the classes are so big, it is more time consuming butwe have a lot of stuff on videotape which highlight the main points of a lesson and every class has a video-tape.

THE COURT: Generally use the method where the teacher asks questions and poses problems and the class will respond to it and there will be discussion about that

response.

THE WITNESS: Exactly. We use the situation testing on the exams to get the same kind of discussion. We try to get the concepts down more than the memorization.

Q In the area of traffic control, do you discuss what the role of the police officer is in a funeral?

A To tell you the truth I don't know.

Q Would that be something you would anticipate covering in that type of course?

A I don't know if we cover a funeral. I don't know. The main thing we try to teach our police officers really is the ability to use their own judgment because they're basically non-supervised out there. They don't have the supervisor to confer with. If it's one thing that we are trying to do is to get them to learn how to make judgment on their own.

Q And you give them guidelines for making those judgments?

A Yes.

Q You teach them about the problems that police officers face in a family dispute situation so they have some guidelines in exercising their judgment?

A Yes.

Q You teach them about the problems faced in

crowd gatherings and how to exercise their judgment in curbing a demonstrator who might be stepping out of a crowd?

A Yes, we do.

Q You testified that you believe that at some level, mathematical ability is necessary for the job of police officer.

How much algebra is taught at the academy?

A We do not teach algebra.

Q How much algebra is involved in a policeman's job, if you know?

A I don't know. Perhaps the accident investigation unit may use algebra in measuring, determining the speed of a car. I'm not familiar with the mathematical formulas they use but thatis one area, higher math, shall I say is used.

Q But the basic approach in your course is to understand pretty miniscule types of mathematical problems. What are the kind of mathematical concepts taught?

A We don't teach much math per se. What I would hope is the police officers who come to us would have a basic understanding, level of intelligence which would include mathematical ability. There are

certain responsibilities -- at the police academy what we try to do, we try to turn out a police generalist, and from that, from the numbers of police generalists are selected later on Specialists for certain other assignments, the accident investigation, detective work. They are picked from --

Q They then go through a particular training course?

A They would receive specialized training.

Q For that type of endeavor?

A That's right.

Q Let me give you a question fromthis exam and ask you whether or not it resembles anything involved in your idea of what a police officer does. I am still referring to 0013. I am referring to question 69:

"At the butcher shop a housewife bought three and a half pounds of chopped meat at 82 cents a pound, five and a quarter pound roast at $1.28 per pound, a four-pound chicken at 43 cents per pound and seven frankfurters at 16 cents each. The amount of change she received from a $20 bill was."

Does that task involve a political police officer's task?

A No, but however it is something to indicate

that the person has the ability to exercise reason and judgment.

Q Of a mathematical nature?

A In that case a mathematical nature, yes. There are times when police officers have to have that ability. They would have to be able to reason and perhaps use math. We have gasoline delivered and dispensed on a regular basis. Somebody has to keep track of that.

Q Does somebody read a dial to do that, to see --

A Tanks have to be measured, I assume. Each amount dispensed has to be recorded in a book and it has to be totalled up.

Q Is that an algebraic function?

A No, I don't believe it is.

Q One of the things that you testified is taught at the academy is to complete the number of forms that a police officer must complete. He is taught to fill in the blanks essentially on the separate forms and maintain his daily log.

A Not just fill inthe blan ks. Some of the forms are captioned, others are more narrative. Almost every form that I can think of has an area where details are put down and it's up to the police officer to write and communicate certain facts, not just put in a word or check

off a box.

Q Would you tain them how to fill those forms out?

A Yes, sir.

Q Would you tain them in reading a chart or a table?

A I don't believe -- well, if you could interpret the accident form where the police officer has to draw the crime scene and the distance of vehicles and skid marks and things of that nature we would be into that. Also crime scenes. We have instructions in that area where you have to be able to relate the distance of objects and persons.

Q Did you ever see a chart in your experience like this chart that introduces question 76 to 80?

A Have I ever seen a chart like that?

Q In the course of your duties and supervising the duties of patrolman does he come into contact with a chart of that nature? I am referring to the chart which proceeds question 76 through 80 on 0013.

A Police officers at a precinct level who keep the crime statistics, arrest statistics, very well could be into this.

Q Do they keep charts like this?

A Yes, sharing one year against the other year by month. I have done studies where I compared them by day and hour of the day.

Q The patrolman does this, prepared a chart ofthis nature inthe stationhuouse, is that your testimony?

A Yes.

Q Is that a chart, a bar chart indicating the amount of arrests and convictions or similar type of enumerations prepared by a patrolman in the service house?

A That's right. It could also be done by civilians, depending on the staff increasing but I have certainly seen patrolmen doing it.

Q In preparing such chart, as you testify the chart is prepared, is he supervised by anyone in the police precinct?

A I would assume so, yes.

Q Who would supervise his work?

A If they had a planning sergeant, perhaps he would be assigned. He would probably be assigned to some sergeant.

Q The sergeant that would be in charge of maintaining these types of records, would be the supervisory person?

A That is correct.

Q The sergeant would have responsibility on making sure that patrolmen did an accurate job, is that accurate?

A That's always the way of the police department, yes.

Q So that in preparing this chart, the patrolman would turn to the sergeant for guidance?

A Well, for guidance if he needs it and if he has the capability, certainly it makes the sergeant's job easier and he can delegate the task and theman can carry it out with less supervision and then the sergeant can put more of his efforts to other people who need more supervision.

THE COURT: Looking at Exhibit LL, maybe I misunderstood: I don't see how -- let me put it this way:

You seem to be asking questions which relate to Captain Lawlor defending or correlating the questions on these exams. I don't understand that his testimony, number one, related to that.

And, two, even though he has placed emphasis on reasoning and relating and so forth, the attrition rate as between the various groups is not great enough for this to make a difference, in my judgment. At least from this chart. I don't think I understand what the question on this area is leading to.

MR. KIMERLING: If I might, your Honor. The question about the correlation between the examination and the academy courses --

THE COURT: He didn't --

MR. KIMERLING: Excuse me.

THE COURT: I thought he was relating to the curriculum at the academy and since he was there, he had been doing, was attempting to upgrade the kind of training that was given at the academy. I didn't think until you introduced the questions that he said were taught anyway in these examinations.

MR. KIMERLING: He did not address this examination or any examination in particular. However, he did in response to a question by Miss Carroll, indicated that areas that he felt the examination should carry were word for word what these areas covered in phase one.

MS CARROLL: I think his testimony was to the

skills that a trainee should be possessed of for him to train them. I don't think he made any judgments with respect to exams. I don't think he has seen them.

THE COURT: I thought that's what he said. He said you have to be able to reason, you had to be able to express themselves orally and they had to be able to write. Maybe there were a few others. I took down some notes. But in any event, I thought he was correlating about that. I didn't believe he indicated that about the examinations. But you go ahead.

MR. KIMERLING: Theoretically the examinations are the device by which you choose people who have these skills. If I might clarify one point further,your Honor, I believe it to be tentative to preparing an examination, you do not test foe an area which is expected to be trained for. Captain Lawlor's testimony indicates that many of the areas being tested for are in fact, the areas that are being subsequently trained for as well. There is a question about whether or not an examination should address those areas.

Q Captain Lawlor --

THE COURT: I'm sorry to keep interrupting. I suppose if you are tained in law school, we are all

trained in law school, but in order to get that training we have to know how to read, right?

MR. KIMERLING: No question about it, your Honor.

THE COURT: I gather that's one of the things that Captain Lawlor is saying in regard to the kinds of things, kinds of curriculum thathe has introduced into the academy, these are some ofthe basic things that are needed in order to be able to profit by it, correct?

MR. KIMERLING: I think your Honor is correct. He also has testified that reasoning and judgment are an area of concern for the recruit. I think it is evident from Mr. Weiner's testimony and Mr. Lawlor's testimony that the areas in which judgment are being exercised are areas in which in fact the academy is teaching people to exercise judgment to the extent that anybody can be taught to exercise judgment.

THECOURT: All right.

MR. KIMERLING: If I just might inquire into one further area on the examination.

THE COURT: I don't want to cut you off. I was just trhing to understand your point.

Q I refer you to the section involving city information which is questions 21 through 40 on this

exam, Captain Lawlor, is one of the things that you teach in your social science part of the course awareness of the city. I understood your testimony to be that?

A Yes, sir.

Q You teach them about the economy of the city as well, is that correct?

A We try to give them some feel for the spending problems and funding system.

Q Would you teach them about Phoenix House, for example, a drug therapy house?

A I don't think we teach them, you know, about Phoenix House specifically, no.

Q Would you teach them about the subway system?

A No. I don't think we teach them specifically about it. We teach them the broad geographic breakdowns of the city. We relate that to, say, some of the ethnic areas as well. We try to give them a broader perspective of the city.

Q You teach them about the geography of the city?

A Yes.

Q You indicated, I believe, in your direct testimony thatyou feel when these men come to the academy, they have high school diplomas or high school equivalency

diplomas which you believe puts them in a position to undertake this college level course, is that accurate?

A Yes. This is the basic assumption that they have this and you must understand that that is the base. Then we go beyond that.

Q Do you know of any study done which indicates that college level materials or college level skills are necessary to do the job of a police officer?

A Well, I know that many of the recommendations of the President's Crime Commission and the other studies that we recommended before, recommend college training for police officers.

Q Do you know of any study which indicates that these college trained people make better police officers?

A No. I think it was the assumption of the President's Crime Commission, though, that a broader educated, better educated police officer would be able to better meet the needs of society.

Q There is a chapter in this manual which talks about police officers getting in trouble.

A Getting in trouble?

Q Described somebody with a fictitious name and they said he had a very good record but he was found on four occasions to abuse a private citizen and as a

result was dismissed from the acacemy.

A This would be the integrity control chapter of the social science curriculum.

Q I believe so. It refers tc a captain, is that correct? The qualities that you try to emphasize, they are ones of integrity, ability to work in a community, is that accurate?

A What we are trying to do theer is to show the police officers the hazards of police work. They are not police officers, they are really civilians who have just been employed by the police department. I think they don't realize the many hazards. I don't think they realize what attempts will be made to corrupt them and we feel it is our responsibility to forewarn them and forearm them by showing the hazards so that they can be conscious of it and so they can be conscious of not only themselves but hte other police officers they are working with.

Q Would you say that one of the elements of being a police officer is having integrity, a good police officer?

A Yes.

Q One of the elements of being a good police officer is being able to withstand abuse from citizentry?

A Verbal abuse, are you talking about?

Q Yes.

A Yes.

Q Do you think that one of the elements of being a good police officer is being able to work well with your fellow officer?

A I think that's an ability for anybody.

Q As well as to work well with the community or the people that you are serving?

A Yes.

Q Do you think that the academy trains people to have integrity?

A Well, I would hope that people have integrity when they come to us. Hoever, we are very conscious of the attacks that are made on our integrity, the temptations that are put in our paths, so what we try to do is identify the corruption hazards and make them conscious of it and so they don't go out and stumble into it because they are naive. Hopefully to show them, number one, to let them know that the department absolutely insists on integrity and to show them the different procedures that they can utilize within the department to report breaches of integrity and what procedures that they can take to insure that their integrity does not come

under question, that they don't do something that may be interpreted by somebody else.

THE COURT: Mr. Kimerling, is it your impression that in order to prevail, that you are going to have to downgrade the police academy's program and curriculum?

MR. KIMERLING: No, I'm not.

THE COURT: Or the fact that the police, Captain Lawlor, and other people in the field want to get a better educated police officer. Do you feel you will have to go against that in order to win this case?

MR. KIMERLING: I think you have raised two points and if I might address them. One, I think there are elements to the police job which are indicated in phase one which were not discussed with Captain Lawlor which are not elements that are taught, that is, you expect someone to be --

THE COURT: I understand that.

MR. KIMERLING: Let me back up a step, if I might, your Honor. One of the things that Davis B. Washington was concerned with was the relationship between the test and the academy in Washington, D. C. We have now been informed by the defendants that they have or are in the process of completing a similar analysis

to show the relationship between their test and the academy. I think it is -- in plaintiff's position, one, that the academy and the results are not a true indication of what a man is going to be as a police officer. It is not a total picture ofthe man. That is because --

THE COURT: You know, I understand that. I don't think that you have to show in terms of your case, I don't think you have to show that a program that's raised and oriented to college level is one that can avoid the issue of discrimination.

MR. KIMERLING: I don't believe that's true either, your Honor. I think what we are attempting to demonstrate is that a relationship between the examination and the academy and its academic performance standards there, is not necessarily an indication of a relationship between who is and who is not going to be a police officer. And I think that's what the inquiry is about.

Q Let me just return to this area of integrity, Captain Lawlor. I think it is fair to assume,and correct me if I am wrong, a person who comes into the academy without this basic integrity is not likely to be persuaded by anything in the academy, is that accurate?

THE COURT: I would think that that kind

question, since there is no jury before the Court, to make the assumption, although I'm sure at times you have reached a different conclusion, that the trier of the fact has some rationality. You don't have to ask that question. That answers itself.

A I don't think there is any individual who has no integrity. I think it is a matter of degree. I think everybody has some integrity, motivated by some force.

THE COURT: I see the new social science method you are teaching is rubbing off, Captain.

THE WITNESS: Well, it is rubbing off on more than one person.

Q Captain Lawlor, this Exhibit LL which involves the way in which people succeed or don't succeed at the academy, do you have information inthe academy which would indicate examination from which somebody entered the academy, would that be in your records?

A Yes, it would.

Q Have you ever done a correlation between people from one particular exam and their success and failure?

A No.

THE COURT: Has he made a correlation

between success and failure people taking particular exams and the successful failure inthe academy and the answer was he didn't do any.

Q These figures reflect people that entered from older police examinations given in '68, '69 and '70, people that came from the new police examination in 1973 and people that came from the housing and transit authority examinations, is that correct?

A I believe it would be, yes.

Q You haven't separated out the housing authority and the transit authority from these round figures?

A No, I haven't.

Q The column that talks about resigned or terminated, while as you indicated, many people resign as opposed to being terminated, are some of the resignations for personal problems?

A Yes.

Q Do you have an idea, an estimate of how many people from each class resigns for personal reasons?

A It would be my judgment that very, very small per cent resign for personal problems. To put it in a percentage, I would say no more than 2 per cent. That's from my experience. Especially these people who

have waited so long, some of them were on the list for five years and they waited so long to get there and they weren't about to turn around and resign within the first six months. Although a few have.

Q You indicated that among the man's records are psychological tests. What test is that, Captain Lawlor?

A I'm not familiar, to be honest with you, the medical section administers those tests and controls those tests. It is a battery of six tests, I know that.

Q Do you know what the IQ test is?

A The Otis and the Bata.

Q Do you know if they use a Wechsler?

A I don't know.

THE COURT: What is that, I didn't hear that?

MR. KIMERLING: One of the IQ tests is called Wechsler, your Honor.

THE COURT: I heard that and the answer to that,but then you said something else.

MR. KIMERLING: If I did, I don't recall what I did. He suggested the test he recollected from the form was the Otis and the Bata test. I asked him if they used the Wechsler test as well and he said he didn't believe so.

Q The reading comprehension test, do you know what that is?

A No, I don't. We use a Nelson Denny. There was a time when we formulated our own reading test in relation to our own curriculum. It was the Nelson Denny that I would get the marks on. I'm not certain though.

MR. KIMERLING: Your Honor, there is going to be a time at which defendants will try to demonstrate a relationship between the academy and the examinations as I have indicated. I think it would be appropriate for us to get a copy of these examinations which are used in the beginning of the academy course as well.

THE COURT: Is that possible, Captain?

THE WITNESS: I would believe it is, sir.

T8B THE COURT: If it is, you will provide that to Ms. Carroll?

MS. CARROLL: Your Honor, with respect to this study, which we have had so much preview comment by Mr. Kimerling, our study is a study of the final score at the Police Academy, a correlation study, that score and the score on the exams. This is not a correlation of these pre-test areas of psychology and reading. We didn't do that. We have a final grade at the academy and a grade on the examination.

THE COURT: What I understand Captain Lawlor to indicate there was some indication on those entry examinations, particularly, in terms of reading and so forth of how well they --

MS. CARROLL: It is relevant but it is not relevant to our study. I will produce them. I wanted to articulate where they come from.

Q Now you have indicated, as your Honor indicated-- strike that. Have you undertaken any studies which indicate a correlation between a person's performance in the academic courses in the broadest sense of the term and a person's performance in the field, under a field service officer?

A No, I haven't done any studies. I can make

an observation, though, that of the police officers who successfully complete the academic training and go on into the intern program, that very, very few, although there have been some, very few are terminated during the intern program. Although they are monitored and evaluated very closely during that time.

Q Have you undertaken any study between persons who have graduated from the academy and have completed their probationary period and now are on the job?

A No. I haven't. However, the police testing and performance study that I have referred to before, does make a statement in there that the performance at the police academy was, if I am not mistaken, the best indicator of future police performance.

Q What study is that?

A That would be the police training and performance study conducted through LEAA in 1969 of our Police Academy.

Q This is the study you were referring to?

A Yes.

MR. KIMERLING: That's not in evidence yet.

Q In determining assignments upon graduation from the academy, is a person's success in the academic courses at the academy used in making that determination?

A I have nothing to do with the assignments. The

special order section of the Personnel Bureau make all assignments and the Police Academy does not make them.

Q Do you know whether or not they inquire at the academy about a person's success at the academy?

A No, they don't inquire. I don't believe that it is taken into consideration for the first assignment, first field assignment.

Q Are you aware of men that have gone through the academy and maybe even been part of the remedial program that went on to be successful police officers?

A Am I aware of men that went through the academy and were part --

Q Who just borderlined it out, if I might use that term, and then went on to be successful police officers.

A Yes. We ran a tutoring program for that exact purpose. We found that the students with the difficulties were the ones that attended. Obviously, if you were doing well, you wouldn't waste your time and spend two or three days extra in school. We found the students who did attend, were the students who needed the help. Through the tutoring program, very heavily attended by minority students, we had an 85 percent success rate in meeting those standards.

Q My question goes to a further area. Once these

1 people successfully complete the academy and are now in
2 the field, are they successful police officers?
3 A I'd have to say yes to that. You know, they are
4 no longer part of my command so I don't necessarily get
5 feedback. But I'm sure as a group, if they were unsuccess-
6 ful, our graduates as a group are unsuccessful, the depart-
7 ment would supply me with the feedback, and I would rectify
8 training procedures. So I certainly would have to assume
9 they are successful.
10 Q Are there people who do very well in the academic
11 part of it and score way up in the nineties and 100?
12 A Nobody scores in the hundreds. It is very
13 rare for anybody to score over 95 and 92 is usually about
14 the highest mark you will attain.
15 Q Some of those up in the top rank of people going
16 through the academy, are the people in that group who were
17 subsequently failed out because of some indiscretion during
18 the probation period?
19 A If they were in the top and they failed out?
20 Q Well, no, they are in the top and they passed
21 their academy and still in the probationary period whether
22 under the field service observation or at the precinct house,
23 do some of those people drop out because of some indiscretion
24 A Yes. There are relatively few that are terminated,
25

say, between the academy and the end of the intern program. However, there are some. They are people who have the ability to learn in the classroom but usually are too rigid and can't communicate, can't handle situations on the street. They are few and far between, but they are there. Others go on past that but very few would be terminated in their precinct, very, very few. Once they get past the Police Academy, it is rare that they will be terminated in the following four months.

Q I want to change over a little bit to the way in which people are graded in the academy. There is a six month course there. How are grades derived?

A In the academics? We give four quarterly examinations, just covering the material that was presented to them during that quarter. Then, after the fourth quarter we give them another examination, a fifth examination, now, which is a comprehensive examination of the whole course of study. Each of those examinations, five examinations, have an equal weight. They are averaged out and you must have 70 percent. By 70 percent, we have gone with the Civil Service standard of anything above 69. In other words, 69.1 or above, we will round out and make it a 70.

Q Is there --

THE COURT:Mr. Kimerling, it is 2:15. How close

are you to finishing?

MR. KIMERLING: I'm very close. I just want to cover this area of grading.

THE COURT: Because I have something to do at 3 o'clock and I have to get something to eat.

MR. KIMERLING: I will be able to complete this very shortly, your Honor.

THE COURT: Otherwise, I will have to ask Captain Lawlor to come back. I'm enjoying his testimony, so I won't mind it in any event.

Q Are there any grades given for the physical part?

A Yes, separate grades. You must pass each of the three areas separately, firearms, physical and academics.

Q Is there any other grading that takes place in the academy?

A No.

Q Are grades obtained from the field service officer or operation?

A Evaluations are but not grades. We convert them into academic grades for the college credit, but it is just formal evaluations, three of them during the

b2 nine weeks.

Q Those evaluations are satisfactory, unsatisfactory and --

A There are about five categories. They range from unsatisfactory to more than satisfactory.

Q After they complete this field of service part and they go into the completion of the probationary period in the station house or wherever they are assigned, are there additional grades?

A Yes. There would be another evaluation at the end of the probationary period or just prior to the end of it.

Q This last evaluation would cover how much time?

A Really, it would cover four months.

Q Four months. The field service officer evaluation would be three in six weeks?

A They intern three in nine weeks. Each three weeks.

Q In determining whether or not a man will be appointed as a police officer, is there any weighting between these separate grades that they receive?

A The Police Commissioner makes final determinations based on the man's total record and total performance in the department.

Q So that he would look at the report he got from the station house as probation, the field services report --

A Everything, academy reports.

Q As far as the academy itself, is there a single grade that someone gets at the completion of the academy?

A I don't know what you mean by a single grade.

Q Is there a practice of summing up all the separate grades in giving that person a grade, weighting grade?

A There was. The only reason for that is because different awards are given. But as far as the department, as far as the academy is concerned, there are three separate areas and each is independent of the other. That's where our concern is. Four awards, highest general overall average, second highest, highest academic, highest physical. There are about seven separate awards.

Q As far as you are concerned, these are equal areas of concentration, the academic, the physical?

A Equal as far as importance though but not equal in our commitment in time. We don't give the same amount of time to the physical and academic and as to firearms.

Q Is the grades or remarks by the field service officer included in any grading system at the academy?

A Not a grading system but a satisfactory or unsatisfactory type of system.

MR. KIMERLING: Your Honor, I have spoken to our

expert in regards to these or this further proffer of proof about the correlation between the academy and the examination. I believe that relevant to see the examinations that are used in the academy to get the individual grades, and I would request that defendants produce samples of the different exams that are used to produce these grades.

THE COURT: Well, Captain, is that feasible?

THE WITNESS: I believe we have copies.

THE COURT: Just samples of some examinations.

THE WITNESS: Yes.

THE COURT: If it is feasible, fine.

THE WITNESS: Are you talking just the academic? Obviously, firearms is not a written examination.

THE COURT: You can't give samples that you don't have. But anything that you have covers the various areas. I think that's what they mean.

Q If, Captain Lawlor, you have a physical examination which indicates what a man must do to complete the physical, that would be fine.

THE COURT: Also, the entry test and so forth. Anything else?

MS. CARROLL: I have just a couple of questions.

REDIRECT EXAMINATION

BY MS. CARROLL:

Q Captain Lawlor, if a person failed the academic portion of the probationary period, in other words, he fails the Police Academy, does that person proceed through any of the rest of the training?

A No. I hold him in the Police Academy and I make recommendations to the Police Commissioner after reviewing the total record of the individual.

Q In other words, the Police Commissioner cannot terminate a person upon completion and failure of the Police Academy?

A Yes.

THE COURT: You hold them, does someone ever take the academic again?

THE WITNESS: No, sir. None to my recollection have gone on.

THE COURT: What do you mean, you hold them? You hold them --

THE WITNESS: Until the Police Commissioner makes a determination.

THE COURT: But he can determine that they can go on?

THE WITNESS: He could. He could. It hasn't been my experience that he has, but he could.

Q With respect to your experience with the 3500

trainees that you previously mentioned, could you give us an estimate as to how many persons failed the physical or the firearms portion of this jury of study?

A We have never had anybody fail the firearms portion, primarily because it is a mechanical skill and those who are more deficient than others, we can work with them and in a short period of time teach them the skill by putting on a one on one instructor. We have been able to handle that without any problem. There have been failures in physical only about maybe a half a dozen student officers have not passed our physical requirements.

Q With respect to the final grade at the conclusion of the course of study at the Police Academy, you specifically mention that a person has a 69.1, you will consider that as a 70 for purposes of passing. What do you derive that figure from? Can you describe where it comes from?

A I believe that is the Civil Service standard on promotion --

Q I'm sorry. I didn't make my question clear. What I mean, the number calendar source of that, how do you come to the conclusion that his average is 69.

A Well, it is a matter of taking the five marks from the four quarter examinations and the comprehensive examination, average them equally and whatever their final

average is, that's his final mark.

MS. CARROLL: Fine, thank you. I have no further questions.

MR. KIMERLING: I apologize, your Honor. I have one more.

RECROSS EXAMINATION

BY MR. KIMERLING:

Q Are the physical and firearms examination ranked, that is, can you get a 90 as opposed to a 70?

A Yes. The firearms we require a 75 because of the nature of those judgments.

Q Do you have in your files all the examinations from the older curriculums?

A I don't know.

MR. KIMERLING: May we get the older examinations as well and I wonder if we could have them produced if they are available.

MS. CARROLL: Sure. We will provide a sampling of tests given at the academy for all the curriculums.

THE COURT: Thank you, Captain Lawlor. All right, our next session is possibly the 19th.

MR. KIMERLING: That's correct, your Honor.

THE COURT: How long is it going to take us to conclude this? You have more witnesses, Ms. Carroll?

jph 13

MS. CARROLL: We have two witnesses.

THE COURT: And then you will have witnesses?

MR. KIMERLING: I think so, your Honor.

THE COURT: I think you better try to give us some idea how many days you will have. I had planned to spend July in chambers writing opinions. I would like for you to know so at least I can make up my own schedule.

321-1M-421040(53)

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being duly sworn, says, that on the 14Th day of APRIL, 1977

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Sworn to before me, this 14Th
day of APRIL, 1977

Jeffrey Bentsen

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